

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

**CM-21114-CII-2015 &
CM-5641-CII-2016 in
FAO-6740-2015**

Date of Decision : 07.04.2016

RANJIT KAUR

.....APPELLANT

VERSUS

ELECTION TRIBUNAL CUM SUB DIVISIONAL MAGISTRATE SRI
MUKTSAR SAHIB & ORS

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.S. Rangpuri, Advocate,
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J (ORAL)

CM-5641-CII-2016

Prayer in this application is for placing on record
documents appended alongwith the applications.

The applications are allowed subject to just exceptions.

Documents are taken on record. Exemption is also
granted from filing its typed/certified copies.

FAO-6740-2015

Challenge in this appeal is to order passed by the
Election Tribunal, Sri Muktsar Sahib dated 10.08.2015, whereby, the
Election Petition under Section 76 of the Punjab State Election
Commission Act, 1994 has been dismissed on the ground that the
allegation as made by the appellant in the Election Petition has not
been substantiated.

2. It is the contention of the learned counsel for the appellant that as per the provisions contained in Rule 34 of the Punjab Panchayat Election Rules, 1994, the counting has to be in a place to be notified in advance. He contends that initially the counting was started in the room of ward No. 3, booth No.133. After counting of the votes of that particular booth, the appellant was leading. For counting of the ballots which was polled for booth No.134, the venue was shifted and the counted votes were put in a box but was not sealed. In the second room i.e. booth No.134, the counting of votes polled in the said booth were carried out where manipulation was done and certain bogus votes and even the votes which were thumb marked were counted to the credit of the respondent No.2 Gurwinder Kaur. Same was the position with regard to booth No.135.

3. On a question put by this Court, the learned counsel for the appellant stated that the premise although was one i.e. a Government School but the rooms were different as per the booth where the counting was carried out which is not permissible in law. He thus contends that the prayer primarily was for re-counting of the votes and the Tribunal has not appreciated the pleadings and the evidence led in this behalf by the parties and had simply rejected the Election Petition by asserting that there was no illegality in the counting of the votes and that the pleadings did not substantiated as has been asserted. He further contends that the impugned order cannot sustain and deserves to be set aside.

4. I have considered the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned judgment.

5. As per rule 34 of the Punjab Panchayat Rules, 1994, the word as has been raised in the said rule is counting at a place to be notified in advance.

Rule 34 of the Punjab Panchayat Rules, 1994, reads as follows:-

“34. Counting of votes where there is more than one polling station:-

(1) In a Gram Sabha where there is more than one Polling Station, the Presiding Officer of each Polling Station shall, as soon as practicable, after the close of the poll, close the ballot-boxes used at the Polling Station in such manner as the Election Commission may direct and forward them to the Returning Officer.

(2) When the ballot boxes used at all the Polling Stations, in his Sabha or Constituency area have been received, the Returning Officer shall, as soon as practicable, follow the procedure prescribed in rule 33 for the counting of votes and the declaration of results:

Provided that in case of Constituency of a Panchayat Samiti and Zila Parishad ballot-boxes from all the polling stations of a Constituency may be kept at a secure place and counting may be done on a day fixed for counting by the Returning Officer and at a place to be notified in advance :

Provided further that separate parties will be deployed for counting and the candidate may also deploy one counting agent for each counting table and one more counting agent for the table of the Returning Officer. The counting will be done by the counting parties and at the end of the each round the result of counting shall be compiled. Final result shall be declared in accordance with rule 33.”

6. Learned counsel for the appellant could not dispute the fact that the said Government School was notified and, therefore, the rooms therein, where different booths were made, was an area

where the counting had to take place. Even if assuming that the votes were first counted in booth No.133 and in the second and third booths respectively i.e. 134 and 135, that would not make any difference especially when the same was within the same premise i.e. the Government School and in any case, the appellant was admittedly present in all these 3 booths at the time of counting of the votes but no objections in writing was ever given by the appellant to any of the competent authorities including the Election Commission which fact is not disputed. Mere bald assertion of the appellant in her statement before the Tribunal would not be enough especially when the onus to prove the assertions as made was upon the appellant. The Court below has rightly proceeded to consider the pleadings and the evidence lead by the parties and dismissed the Election Petition. The impugned order being in accordance of law do not call for any interference by this Court.

4. In view of above, the present appeal stands dismissed being devoid of merit.

CM-21114-CII-2015

Stay application is to be disposed of.

April 07, 2016
Dinesh

**(AUGUSTINE GEORGE MASIH)
JUDGE**