

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

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FAO No.6741 of 2015 (O&M)
Date of Decision: January 22, 2016

Ajit Singh

...Appellant

Versus

Presiding Officer-cum-Sub Divisional Officer, Election Tribunal
(Panchayat Elections), Bathinda and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Harinder Singh, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.21118-CII of 2015

Prayer in this application is for condonation of delay of 3 days
in filing the appeal.

For the reasons mentioned in the application which is
supported by the affidavit of the applicant-appellant, the same is allowed.

Delay of 3 days in filing the appeal stands condoned.

CM No.21119-CII of 2015

Prayer in this application is for exemption from filing the
certified copies of Annexures A-1 and A-2.

The application is allowed subject to just exceptions.

Annexures A-1 and A-2 are taken on record.

FAO No.6741 of 2015

Challenge in this appeal is to the order dated 22.07.2015 passed
by the Sub Divisional Magistrate-cum-Presiding Officer, Election Tribunal
(Panchayat Elections), Bathinda, whereby the election petition preferred by
the appellant-petitioner against the respondent-Gurmail Singh for the post

of Panch of village Gaatwali, Ward No.7 General, which was held on 03.07.2013 and result declared on the same day, stands dismissed.

2. It is the contention of learned counsel for the appellant that one vote of Rajdev Singh, Numberdar, which was polled in favour of appellant-petitioner, has been counted in favour of respondent-Gurmail Singh. That apart, he asserts that four votes of appellant-petitioner have been cancelled but those votes have not been shown to the appellant or his agents at the time of counting as mandated under Rule 33 (C) of the Punjab Panchayat Election Rules, 1994. He further contends that there is a difference of only one vote between the appellant and respondent-Gurmail Singh and if one vote which has wrongly been credited to respondent No.1, goes to the benefit of the appellant, he would stand elected and in any case, if the said vote is a cancelled vote, the votes would be equal and the process has to be further taken as provided under the Rules. Prayer has, thus, been made for setting aside the impugned order passed by the Sub Divisional Magistrate-cum-Presiding Officer, Election Tribunal (Panchayat Elections), Bathinda, without considering the said aspect.

3. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned order.

4. No doubt, as has been asserted by the counsel for the appellant, as per the provisions contained under Rule 33 (C) of the Punjab Panchayat Election Rules, 1994, the candidates and their agents, who may be present, have to be allowed a reasonable opportunity to inspect all the ballot papers, which in the opinion of the Presiding Officer, are liable to be rejected,

although they are not to be allowed to handle the same in any manner but no objection has been raised by the appellant-petitioner when the votes were rejected which according to him were polled in his favour and, therefore, should have been credited to him. He asserts that oral objection was raised but nothing has been given in writing. Mere oral assertions cannot be made the basis for returning a finding that there was an objection raised by the appellant-petitioner with regard to non-showing of the rejected votes or wrongful rejection of the votes. The findings, thus, recorded by the Sub Divisional Magistrate-cum-Presiding Officer, Election Tribunal (Panchayat Elections), Bathinda, cannot be faulted with as the same are based upon proper appreciation of the pleadings and the evidence brought on record as also the statutory provisions applicable to the case in hand.

5. Finding no merit in the present appeal, the same stands dismissed.

6. In the light of the dismissal of the appeal, the application for stay i.e. CM No.21120-CII of 2015, stands disposed of as infructuous.

January 22, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE