

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

**C.M. NOS.24176-24177 CII OF 2015 &
F.A.O. NO.7675 OF 2015
DATE OF DECISION: JANUARY 14, 2016**

Pal Singh @ Pala Singh

.....Appellant

VERSUS

**The Presiding Officer, Election Tribunal-cum-Commissioner, Municipal
Corporation, Patiala and others**

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. H.P.S.Ghuman, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASI, J. (ORAL)

C.M. No.24176 CII of 2015

Present is an application for condonation of delay of 19 days in
filing the appeal.

For the reasons mentioned in the application, which are duly
supported by an affidavit of the appellant, delay of 19 days in filing the
appeal stands condoned.

Application stands disposed of.

C.M. No.24177 CII of 2015 & F.A.O. No.7675 of 2015

Challenge in this appeal is to the order dated 27.07.2015 passed
by the Presiding Officer, Election Tribunal-cum-Commissioner, Municipal
Corporation, Patiala, whereby the election petition preferred by the
appellant stands dismissed.

It is the contention of learned counsel for the appellant that respondent No.2 has neither put in appearance nor any evidence has been led by him in response to the assertions and averments of the appellant (petitioner before the Tribunal). He contends that there has been tampering in the records at the behest of respondent No.2. Assertion has been made that at the time of counting, the Presiding Officer had declared the appellant elected with 509 votes whereas the votes of respondent No.2 were 433. He accordingly contends that there being tampering of the records, the election of respondent No.2 cannot sustain. Further contention of counsel for the appellant is that at the time of counting of votes, the invalid votes were not shown to the appellant or his other two persons, who were sitting alongwith him.

Counsel for the appellant has placed reliance upon the judgement of Hon'ble Supreme Court in the case of Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others, AIR 1968 (SC) 1413 to contend that if a party, who is in possession of the best evidence on the issue in controversy, withhold the same, an adverse inference is to be drawn against the said party. On this basis, he contends that respondent No.2 having failed to appear before the Tribunal as a witness, an adverse inference should have been drawn by the Presiding Officer of the Tribunal because of his non-appearance and the assertions of the appellant accepted in toto. Prayer has, thus, been made for allowing the present appeal and setting-aside the election of respondent No.2.

I have considered the submissions made by learned counsel for the appellant and with his able assistance have gone through the impugned order and the evidence, which has been placed on record.

The first assertion made by counsel for the appellant is with regard to the tampering in form No.9, on which the result was declared. He has shown a photo copy of the said form to this Court. A perusal of the same would show that as far as the votes, which were obtained by two candidates i.e. the appellant and respondent No.2 as also invalid votes, the same have been written clearly without there being any over-writing or cutting. An arithmetical mistake in calculation appears to have been initially committed with regard to the totalling of valid votes, where earlier it has been written as 1008, which has been subsequently struck off and mentioned as 954. So far as the invalid votes are concerned, the same have rightly been mentioned as 51. However, there is wrong calculation with regard to the total number of votes polled, which was earlier mentioned as 903 but later on has been corrected as 1005. This is merely an arithmetical error as it is apparent from the valid votes polled, which were 954 and by adding the invalid 51 votes, the total comes to 1005. This is an error, which cannot be said to be material, which would effect the outcome of the result as the number of votes polled in favour of the two candidates have been correctly mentioned without any over-writing or tampering.

As regards the contention of learned counsel for the appellant that invalid votes have not been shown either to the appellant or to his other two witnesses, namely, Kulwant Singh and Tejinder Singh, who had appeared before the Tribunal, the same also cannot be accepted as no statutory mandate either in the form of provisions of the Act, rules or instructions have been brought to the knowledge of the Court, requiring showing of the said invalid votes either to the candidate or to his agents at the time of counting of votes. It is not disputed that all these three persons

i.e. appellant, Pal Singh @ Pala Singh, Kulwant Singh and Tejinder Singh were present at the time of counting of votes and it has also come in the cross-examination that no objection was raised or any complaint given by them at that time. The findings, thus, recorded by the Courts below cannot be said to be erroneous.

As regards the contention of learned counsel for the appellant that because of non-appearance of respondent No.2, Gurdev Singh, an elected Sarpanch of the Village as a witness, sections of the appellant should have been accepted in toto, does not carry weight as the appellant has to stand on his own legs with regard to proof of the allegations, which have been made in the election petition and to substantiate the same on the basis of the evidence, which unfortunately he has not been able to.

The judgement in Gopal Krishnaji Ketkar's case (supra), on which reliance has been placed by learned counsel for the appellant, cannot be disputed on principles but the said principle of adverse inference would not be attracted in the present case as there was no evidence, which was mandated to be produced by respondent No.2-Gurdev Singh, which would be in his possession and has not been produced by him. The records were available and have been perused by the Tribunal while passing the impugned order.

In view of the above discussion, I do not find any infirmity or illegality in the impugned order and accordingly dismiss the appeal.

Since the main appeal stands dismissed, C.M. No.24177 CII of 2015 for staying the operation of the impugned order is also dismissed.

January 14, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE