

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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FAO No. 980 of 2015 (O&M)

Date of Decision: 31.05.2016

Jasbir Singh

.....APPELLANT

VERSUS

Manjit Kaur and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Dharam Pal, Advocate,
for the appellant.

Mr. N.P.S.Mann, Advocate,
for respondent No. 1.

Mr. Naveen Sharma, Advocate,
for respondent No. 2.

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this appeal is to the order dated 06.01.2015 passed by the Sub-Divisional Magistrate-cum-Election Tribunal, Roopnagar in an election petition preferred under Section 76 of the Punjab State Election Commission Act, 1994 challenging the election of Manjit Kaur-respondent No. 1 as Sarpanch of Village Saskaur, Block Nur Pur Bedi, Tehsil Anandpur Sahib, District Roopnagar, whereby the said election petition was dismissed.

When the case came up for hearing on 27.04.2016, the following order was passed:-

“ Heard counsel for the parties.

The basic contention of learned counsel for the appellant

is that as per Rule 36(e) of the Punjab Panchayat Election Rules, 1994, if the ballot paper has been marked in favour of more than one candidate, then the said ballot paper has to be rejected. He while referring to the written statement filed by the Returning Officer-respondent No.3, states that there were two doubtful votes which were basically appearing to be inclined towards respondent No.1 because of which they were taken into consideration as they were polled in her favour and counted towards her resulting in both the candidates getting 302 votes. This clearly shows that these two ballot papers were clearly showing the vote having been cast in favour of respondent No.1 and thus, could not have been taken as valid vote and should have been rejected as was earlier done by the Presiding Officer.

On the other hand, counsel for respondent No.1 submits that the ballot paper has to be rejected only if the marking indicates it to be for more than one candidate. Nothing has come on record which would indicate that the said ballot papers which were counted in favour of respondent No.1 were marked for more than one candidate. Merely because it has been marked within the column but not at the space where it was earmarked for the same, would not amount to rejection of the ballot paper.

Let the ballot papers of the election for the post of Sarpanch (G) of village Saskaur, Block Nurpur Bedi, Tehsil Anandpur Sahib, District Rupnagar, be called. The Deputy

Commissioner, Rupnagar, shall arrange the collection and deposit of these ballot papers with the Registrar Judicial of this Court, within a period of three weeks.

List on 31.05.2016.”

In compliance with the order passed by this Court, the records have been produced, as called for, which have been opened in Court today with the consent of and in the presence of the counsel for the parties.

With the assistance of Sh. Manpreet Singh Gill, Assistant Engineer o/o Ropar Head Works Division (who acted as Returning Officer of Village Saskaur during Panchayat Elections of 2013) and in the presence of the counsel for the parties, the records have been checked especially the ballot papers, which were doubted and the benefit whereof was given to respondent No. 1. One of the two doubted ballot papers has been rightly found to be given to the credit of respondent No. 1. However, the other ballot paper which has been counted and credited in favour of respondent, when checked as per the pamphlet showing Illustrative Cases of Valid and Invalid Postal and Ordinary Ballot Papers issued by the Election Commission of India, 1998, which is admittedly being used for reference in the elections, was found to be invalid. Counsel for the parties also agreed to it.

Now the position which emerges is that the ballot papers found to be cast in favour of Jasbir Singh son of Piara Ram-appellant, comes to 302 whereas that in favour of Manjit Kaur w/o Balraj Singh-respondent No. 1, comes to 301.

The appeal stands allowed in the light of the above and the impugned order dated 06.01.2015 passed by the Sub-Divisional Magistrate-

cum-Election Tribunal, Roopnagar dismissing the election petition is hereby set aside.

The Election Petition filed by the appellant is accepted. Election of Manjit Kaur-respondent No. 1 as Sarpanch(G) of Village Saskaur, Block Nurpur Bedi, Tehsil Anandpur Sahib, District Roopnagar is declared void and the appellant-Jasbir Singh is declared elected Sarpanch (G) of Village Saskaur, Block Nur Pur Bedi, Tehsil Anandpur Sahib, District Roopnagar.

The records have been re-sealed and the same be now returned to the Election Tribunal, Roopnagar forthwith.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

May 31, 2016

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