Amit Kumar
2017.08.03 11:01
I attest to the accuracy and
integrity of this document

HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 5492 of 2015 (O&M)
Date of decision: 31.7.2017

Harjit Kaur ...Petitioner

Versus

Baljit Kaur ...Respondent

CR No. 5502 of 2015 (O&M)

Sarabjit Kaur ...Petitioner

Versus

Surinder Kaur ...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Tarundeep Kumar, Advocate for
Mr. D.S. Pheruman Advocate
for the petitioners.

Mr. Rajinder Sharma, Advocate
for the respondents

RAMESHWAR SINGH MALIK, J. (Oral)

These two identical civil revision petitions, filed under Article 227 of the Constitution of India, are directed against the same impugned order dated 7.8.2015 passed by the learned Election Tribunal, whereby re-counting of votes was ordered, by passing totally non-speaking and cryptic orders. Since both these revision petitions are directed against the identical

Amit Kumar
2017.08.03 11:01
I attest to the accuracy and
integrity of this document

impugned orders, these are being decided together vide this common order. However, for the facility of reference, facts are being culled out from CR No. 5492 of 2015.

Notice of motion was issued and operation of the impugned orders was stayed.

Heard learned counsel for the parties.

It is a matter of record that on completion of pleadings of the parties, learned Election Tribunal framed the following issues:-

1) Whether the election of respondent No.1 is liable to set aside as per ground mentioned in the petitioner?OPP

2) Whether respondent No.1 has declared as Panch in illegal manner by the Presiding Officer when the petitioner defeated respondent No.1 by major difference of the votes?OPP

3) Whether the petitioner has no cause of action to file the present election petition?OPR

4) Whether the petition is bad for mis-joinder and non-joinder of necessary parties?OPR

Election petitions were pending at the stage of evidence of returned candidates-respondents who are petitioners herein. The learned Election Tribunal passed completely cryptic orders, without recording any reason whatsoever, as to why re-counting of votes was being ordered. The learned Election Tribunal did not even close the evidence of the returned candidates in the election petitions, before passing the impugned orders. Having said that, this Court feels no hesitation to conclude that since the impugned orders have been found orders without jurisdiction, it cannot be

Amit Kumar
2017.08.03 11:01
I attest to the accuracy and
integrity of this document

sustained.

A bare perusal of the impugned orders would show that the learned Election Tribunal did not even record its satisfaction that election petitioners have made out a case for re-counting of the votes. The impugned orders would amount to allowing the election petitions without trial thereof. This could not have been done by the learned Election Tribunal by any stretch of imagination. Secrecy of votes cannot be compromised in the manner it was sought to be compromised by the learned Election Tribunal. Under these undisputed facts and circumstances of the case, it is unhesitatingly held that the learned Election Tribunal proceeded on a patently illegal approach, while passing the impugned orders and the same cannot be sustained, for this reason also.

A serious prejudice was likely to be caused to the returned candidates by passing the impugned orders. Returned candidates, petitioners herein, were leading their evidence when learned Election Tribunal misdirected itself, while ordering re-counting of votes treating it to be a routine matter without appreciating its far-reaching consequences, which would cause irreparable loss to the returned candidates. In this view of the matter, impugned orders cannot be sustained.

During the course of hearing, learned counsel for the respondents could not raise any meaningful argument and rightly so, because no such argument is available to him in view of nature of orders passed by learned Election Tribunal. Since the impugned orders are patently illegal, non-speaking and cryptic orders, the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

Amit Kumar
2017.08.03 11:01
I attest to the accuracy and
integrity of this document

noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders are patently illegal, non-speaking and cryptic orders, the same cannot be sustained. Impugned orders dated 7.8.2015 in both these petitions are hereby set aside. However, since the election petitions are pending for the last about four years, the learned Election Tribunal is directed to decide the same as expeditiously as possible.

Resultantly, with the abovesaid observations made, both these revision petitions stand allowed, however, with no order as to costs.

31.7.2017 **(RAMESHWAR SINGH MALIK)**
AK Sharma **JUDGE**

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No