

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

**Civil Revision No.5605 of 2017(O&M)**  
**Date of Decision: September 15, 2017**

Seema Devi

...Petitioner

versus

Suman and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: - Mr.S.S.Sahu, Advocate  
for the petitioner.

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**HARINDER SINGH SIDHU, J.**

This revision petition has been filed praying for setting aside order dated 16.08.2017 passed by the learned Additional Civil Judge (Sr. Judge), Ratia, District Fatehabad (hereinafter referred to as the “Election Tribunal”), whereby, the application of respondent No.1 seeking recount of votes has been allowed.

Briefly, the facts are that election of the Gram Panchayat Sukhwanpur, Tehsil Ratia, District Fatehabad was held on 24.01.2016. The petitioner and respondent Nos.1 and 2 were candidates for the post of Sarpanch. Electronic voting machine was used at the election. Three polling booths Nos.221, 222 and 223 were set up for casting of the votes. A total of 1182 votes were polled in all the three booths. The petitioner secured 362 votes i.e., 133 votes in booth No.221, 133 votes in booth No.222 and 96 votes in booth No.223. Respondent No.1 secured 322 valid votes i.e. 97 votes in booth No.221, 122 votes in booth No.222 and 103 votes in booth No.223. Respondent No.2- Bhupinder Kaur secured 357 votes i.e. 165 votes in booth No.221, 100 votes in booth No.222 and 92

votes in booth No.223.

Respondent No.1 filed election petition challenging the election of the petitioner. It was alleged that Form No.15 of booth No.221 was prepared illegally. In fact, petitioner had got 97 votes in booth No.221, but the Returning Officer, in connivance with her got recorded 133 votes in her favour instead of 97 votes actually secured by her. The petitioner contested the petition and denied the allegations. The Election Tribunal framed issues on 03.08.2016 and adjourned the case for evidence of respondent No.1 on 01.09.2016. On that date without recording any evidence, the Tribunal passed an order directing the recounting of votes of booth No.221.

The order was challenged by the petitioner by filing Civil Revision No.5918 of 2016, which was allowed by this Court vide order dated 07.03.2017. Holding that the order was non-speaking and as such could not be sustained, the matter was remitted to the same Court for decision afresh after hearing the parties.

Thereafter, respondent No.1 filed another application dated 06.04.2017 praying for recount of votes after hearing the parties. The petitioner contested the application contending that issues had already been framed and the parties should be permitted to lead evidence and only thereafter the matter be decided on merits in view of the material that would come on record. However, without recording any evidence, Ld. Tribunal again passed the order directing recount of votes of booth No.221. It is this order which is impugned in this petition.

Learned counsel for the petitioner while assailing the order has contended that there was no material before the Tribunal on the basis of which it could have arrived at prima facie satisfaction that recount of votes

was necessary. He further argued that the Tribunal had wrongly relied on a Full Bench decision of this Court in **Radha Kishan Vs. Election Tribunal-cum-Sub-Judge, Hissar 1999 (4) RCR (Civil) 79** whereas, that decision no longer holds the field after the decision of Hon'ble the Supreme Court in **Udey Chand v. Surat Singh, (2009) 10 SCC 170** which clearly requires that a petition for re-count as contemplated under clause (b) of Section 176(4) of the Act must contain adequate statement of material facts on which the election petitioner relies in support of his allegation(s) and it must also be supported by some contemporaneous evidence to show irregularity or illegality in the counting. Further, there was no material for recording satisfaction even as required by the decision in **Radha Kishan** (supra). He further argued that counting agents of respondent No.1 were present in all three booths but they never made any request for recounting of votes but appended their signatures on Form 15 in acknowledgment of the counting having been done in their presence.

Learned counsel for respondent No.1, on the other hand, defended the order of the Tribunal by arguing that in terms of the provisions of Section 176(4) (b) conducting an enquiry before ordering recount is not necessary, that the considerations on which recount can be ordered under Section 176(4) (b) are different from that required under the Representation of People Act, 1951 and there was sufficient basis for the Tribunal to order the re-count.

Heard learned counsel for the parties and perused the record.

Section 176 of the Haryana Panchayati Raj Act, 1994, in so far as it relevant is reproduced below:

*and procedure. - If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time, within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.*

*(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5) he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.*

*(aa) If on holding such enquiry the Civil Court finds that-*

*(i) on the date of his election a returned candidate was not qualified to be elected;*

*(ii) any nomination has been improperly rejected; or*

*(iii) the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.*

*(b) If, in any case to which clause (a) or clause (aa) does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected: Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.”*

As per Section 176(1) the validity of election of a Sarpanch etc. can be questioned by presenting an election petition to the Civil Court having ordinary jurisdiction in the area within which the election has been held.

The different grounds of challenge to an election are contained in Section 176(4), clauses (a), (aa) and (b).

As per Section 176(4)(a) if the civil court on holding an inquiry finds that a candidate has, for the purpose of election committed a

corrupt practice, it shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

As per Section 176(4)(aa), if after holding such enquiry the civil court finds that (i) on the date of his election a returned candidate was not qualified to be elected; (ii) any nomination has been improperly rejected; or (iii) the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by non-compliance with or violation of the provisions of the Constitution of India or of the Act etc., election of such returned candidate shall be set aside and fresh election may be held.

Section 176 (4) (b) is concerned with cases to which clause (a) or clause (aa) do not apply and the validity of an election is in dispute between two or more candidates. In such a case, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate, who is found to have the largest number of valid votes in his favour, to have been duly elected.

Interpreting Section 176(4) (b) a Full Bench of this Court in **Radha Kishan** (supra) observed:

*“43. The cumulative effect of the above discussion persuades us to settle the legal controversy in relation to the nature and scope of section 176(4)(b) of the Act as under :-*

*“With respect and for the reasons recorded above, we are not quite in agreement with either of the extreme views taken by the Hon'ble Division Benches of this Court in the cases of **Sunehri Devi v. Narain Devi, C.W.P. No. 6381 of 1995, decided on 20.10.1995** and **Bharat Singh v. Dalip Singh and others, C.W.P. No. 9671 of 1995, decided on 6.10.1995**. We would prefer to adopt the middle path and practical oriented approach so as to*

*achieve the purpose of the Act. The scrutiny and computation by recount of votes arises in such election more than often. Such request de hors of the corrupt practices or other allegations prima facie may justify passing of an order within the scope of section 176(4)(b) of the Act. The legislative intent requiring expeditious disposal of a petition and passing of an order of scrutiny and computation without detailed inquiry is explicit in the language of these provisions. Without placing unnecessary emphasis on the language of the Section and to make the law susceptible to the situations likely to arise in the cases to which such provisions are applicable and with intention to obstracise the possibility of confusion we would interpret the Section on its cumulative reading and in synthesis with the scheme of the Act.”*

*44. Ergo we hold that recounting of votes in such an election cannot be directed on more asking and in a routine manner. The applicant, if makes definite averments on verification supported by unambiguous details, in accordance with law, supported by documents, if any, and where the applicant makes out a prima facie case to the satisfaction of the court, nothing prevents the Court from ordering scrutiny and computation of votes on recount in the case falling within restricted scope of section 176(4)(b) of the Act. In other words, the court would not be justified in declining such a relief for the reason that the applicant, irrespective of above, must lead evidence through detailed enquiry. Such detailed enquiry is neither postulated nor would be necessary within the purview of said provisions in the limited cases. afore-referred.”*

It was held that recounting of votes cannot be directed merely on the asking of the petitioner. But if there are definite averments duly verified and with sufficient details and a prima facie case is made out to the satisfaction of the Court, it may direct a recount of the votes. A detailed inquiry would not be necessary.

The Supreme Court considered the question in ***Udey Chand*** (*supra*). The specific question formulated by the Court for its consideration was as under:

*“19. In the backdrop of the aforestated principles, enunciated while dealing with election petitions under the Representation of the People Act, 1951 and the Conduct of Elections Rules, 1961, as also under some of the State election laws, the moot question arising for consideration is as to what is the scope of enquiry under clause (b) of sub-section (4) of Section 176 and whether the language of the said provision carves out an exception to the aforementioned general principles to be borne in mind while dealing with an election petition seeking inspection of ballots and re-counting?”*

The Court answered it as under:

**“23.** It is manifest from the language of clause (a) that while trying a petition containing an allegation of corrupt practice in terms of clause (a) of sub-section (4) of Section 176, the court is required to hold an enquiry to return a finding whether a candidate had indulged in corrupt practice as defined in sub-section (5) of Section 176 of the Act. Significantly, unlike in clause (a), in clause (b) of sub-section (4) of Section 176, the expression “on the holding of such enquiry” is missing and instead the expression used therein is “after scrutiny and computation of votes”. Thus, the question is whether in view of the absence of expression, “on the holding of such enquiry” in clause (b) an enquiry into the allegation of irregularity or illegality in the counting of ballot papers, be it on account of acceptance or rejection of ballots or counting simpliciter is required to be conducted by the Tribunal or a bare allegation of some irregularity or illegality in the counting of ballots is sufficient to order a re-count?

**24.** It is no doubt true that the legislature in its wisdom has not incorporated in clause (b) the expression “on the holding of such inquiry”, as it appears in clause (a), but bearing in mind the importance and the sanctity of the secrecy of a ballot, in our considered opinion, it cannot be the intention of the legislature that a bald allegation of irregularity in the counting process would ipso facto warrant a re-count. Such an interpretation of the provision, in our view, would not only tantamount to automatic conversion of a petition under Section 176(1) of the Act into an order for re-counting, it would be destructive of the settled principle of secrecy of poll, as also violative of letter and spirit of Section 183 of the Act, which mandates every officer, agent, etc. who performs duty in connection with the recording or counting of votes, to maintain the secrecy of votes.

**25.** In our judgment, the sole object of the legislature in giving wide powers to the Election Tribunal is to decide the objections under clause (b) of sub-section (4) of Section 176 of the Act expeditiously without holding a fullfledged regular enquiry, as postulated in clause (a) of the said provision, so that the actual mandate of the electorate is given effect to without any delay; the successful candidate is able to utilise his complete tenure for the purpose he has been elected and above all the purity of election process is safeguarded. Nonetheless, the secrecy of the ballot being sacrosanct, it cannot be permitted to be tinkered with lightly and an order of re-count cannot be granted just for the asking.

**26.** We have no hesitation in holding that a petition for re-count as contemplated under clause (b) of Section 176(4) of the Act must contain adequate statement of material facts on which the election petitioner relies in support of his allegation(s) and it must also be supported by some contemporaneous evidence to show irregularity or illegality in the counting. On this basic material, which affords the basis for the allegations in the petition and the response of the opposite party thereon, the Tribunal is required to record its prima facie satisfaction that in order to decide the issue raised in the petition and in order to do complete justice between the parties the “scrutiny and computation of the votes” recorded in favour of each candidate is necessary. The need to record reasons in support of the satisfaction can hardly be overemphasised because reasons are the soul of the order/judgment. Therefore, we hold that though in an election petition seeking an order under Section 176(4)(b) of the Act, it may not be necessary for the court to hold a regular enquiry as postulated under clause (a) of Section 176(4) of the Act but the court is obliged to apply its mind to the material facts, disclosed in the petition, on which the allegations of irregularity or illegality are founded, along with some contemporaneous evidence, which would depend on the facts and circumstances of each case. An order for re-count on the basis of bare allegations in the election petition would not be a proper exercise of jurisdiction under the provision.”

It was held that any petition seeking re-count under clause (b) of Section 176(4) of the Act must contain adequate statement of material facts on which the election petitioner relies in support of his allegation. It must also be supported by some contemporaneous evidence to show irregularity or illegality in the counting. After considering this material and the response of the opposite party thereto, the Tribunal is required to record its prima facie satisfaction that a “scrutiny and computation” of the votes is necessary in order to decide the issue raised in the petition and to do complete justice between the parties.

The question is whether the prima facie satisfaction as required by the Supreme Court in ***Udey Chand's case (supra)*** has been recorded by the Tribunal in the present case?

The learned Tribunal while recording that the petitioner had made out a case for prima facie satisfaction observed as under:

*“20. Now comes the question, whether the petitioner had made out a prima facie case to the satisfaction of the Court.*

*21. The petitioner's case is that the Returning or Presiding Officer of the alleged election in collusion with Sh. Ram Gopal and Sh. Ram Partap, both relatives (uncles) of Sh. Ishwar Chand (husband of the respondent No.1), has illegally counted her 133 votes at booth No.221 in favour of the respondent No.1 instead of respondent No.1's 97 votes, which were counted in her (petitioners) account.*

*22. That careful delving into respondent No.1's case reflect that she has not denied the fact that Sh. Ram Gopal and Sh. Ram Partap are not the relative (uncles) of Sh. Ishwar Chand, her husband or that Sh. Ram Partap were not present in the room during alleged counting process qua booth No.221. Even otherwise, the bare perusal of Form No.15 qua booth No.221 (copy of which is on record and the same or its contents are not in dispute between the parties) reflect that aforesaid Sh. Ram Gopal and Sh. Ram Partap were present in the room during he counting process. Thus, besides making definite averments, which are duly supported by an affidavit and duly verified, and supported by unambiguous details in accordance with law, the petitioner had made out a prima facie case to the satisfaction of this Court.”*

It was alleged by respondent No.1 in the election petition that the Returning Officer in collusion with Sh. Ram Gopal and Sh. Ram Partap, (both uncles

illegally counted in favour of the petitioner 133 votes which had been cast in favour of respondent No.1 (the election petitioner) and the 97 votes which were cast in favour of the petitioner were counted in favour of respondent No.1.

Beyond this bald assertion, there was no other material or detail to substantiate the assertion.

The Tribunal held that it had not been denied by the petitioner that Sh. Ram Gopal and Sh. Ram Partap are not the relatives (uncles) of Sh. Ishwar Chand, her husband. Nor had it been denied that they were not present in the room during alleged counting process qua booth No.221. And that a bare perusal of Form No.15 qua booth No.221 reflects that they were present in the room during the counting process.

I have carefully gone through the election petition and written statement filed by the petitioner thereto. The relevant extract from paragraph 3 of the election petition which contains the allegation is as under:

*“.....That in total three booths, votes secured in favour of the respondent No.2 & 3 are not disputed and the result of booth No.222 and 223 shown in Form No.15 is also not disputed and valid. But the returning officer of Booth No.221 was in collusion with the respondent No.1 and Ram Gopal and Ram Pratap who both were uncle of the Ishwar Chand husband of respondent No.1 and both were present in the booth No.221 at the time of counting and as such the returning/ presiding officer of the Booth No.221 unlawfully and illegally 133 votes secured by the petitioner counted/ mentioned in favour of the respondent No.1 Seema Davi instead of 97. It is pertinent to mention here that respondent No.1, actually secured 97 votes in Booth No.221 that were illegally counted/ mentioned in favour of the petitioner in Form No.15 instead of 133.”*

The response thereto of the petitioner in paragraph 3 of the written statement is as under:

*“..... It is incorrect that the Returning Officer of Booth No.221 in collusion with the respondent No. 1 and Ram Gopal and Ram Pratap who both were uncles of Ishwar Chand husband of respondent No.1 and both were present in Both No.221 at the time of counting and it is also incorrect that Returning/ presiding Officer of Both No.221 unlawfully and*

*illegally counted 133 votes allegedly secured by the petitioner counted/mentioned in favour of respondent No.1 Seema Devi instead of 97.....”*

Though, the formulation is slightly strained, but clearly the allegations have been denied. Thus, there is no admission regarding the presence of the said Ram Gopal and Ram Partap in the booth no.221, which has been wrongly held by the Ld. Tribunal.

As noticed earlier, beyond the mere assertion in the Election Petition about their presence in booth No.221 at the time of counting and the Returning Officer colluding with them, there is nothing on record in the shape of contemporaneous evidence about the illegality or irregularity in counting to lead to a prima facie satisfaction of the necessity for ordering a recount. The petitioner has, in his written statement, specifically stated that Ashok Kumar Counting Agent of respondent No.1 was present in booth No.221 and he never raised any objection to the counting of votes through EVM nor did he make any request for recounting of votes. Rather, he appended his signatures on Form 15 in acknowledgment of the counting having been done in his presence.

Thus, I find that there was no material before the Tribunal for recording of prima facie satisfaction for ordering recount of votes.

Accordingly, the impugned order is set aside.

The Tribunal may proceed with the election petition as per law.

**September 15, 2017**

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**(HARINDER SINGH SIDHU)  
JUDGE**

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|-----------------------------|--------|
| Whether speaking/ reasoned: | Yes/No |
| Whether Reportable:         | Yes/No |