

In the High Court of Punjab and Haryana at Chandigarh

CR No. 8891 of 2017
Date of Decision: 19.12.2017

Mukesh Kumar

---Petitioner

versus

Gaurav Papneja and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rajesh Narang, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition directs challenge against order dated 2.12.2017 (Annexure P-1) passed by the Civil Judge (Junior Division), Pehowa, District Kurukshetra whereby election petition filed by respondent No. 1 under Section 176 of the Haryana Panchayati Raj Act, 1994 (in short “the Act”) has been allowed and computation, scrutiny and re-counting of the votes is ordered to be done in the court on 20.12.2017.

Counsel for the petitioner has submitted that election of the Panchayat Samiti, Block Ismailabad, Ward No. 8, Tehsil Pehowa was held on 17.1.2016. The petitioner and respondents were contesting candidates in the election. As per result of the elections, petitioner obtained maximum votes of 711 whereas his next rival candidate Gaurav Papneja respondent No. 1 secured 694 votes and as a result, the petitioner was declared successful.

Counsel for the petitioner has assailed the impugned order on few counts. The first submission made by counsel is that respondent No. 1 (election petitioner) has levelled certain allegations against the Returning Officer but the Returning Officer has not been impleaded as a party nor examined as a witness. The second submission made by counsel is that respondent No. 1 has neither examined the other contesting candidates nor their polling agents to substantiate his plea with regard to his having secured 76 votes in Booth No. 56 or 20 valid votes secured by him have been illegally rejected by the Returning Officer.

Another submission made by counsel is that result of elections was declared at about 3-00 p.m. on 17.1.2016 and the very fact that respondent No. 1 did not submit a representation to the Deputy Commissioner, Kurukshetra on that day pointing out any irregularities/illegality is sufficient to prove that application filed on the succeeding day is the result of an afterthought. The last submission made by counsel is that the petitioner has referred to judgment of Hon'ble the Supreme Court of India **Udey Chand vs. Surat Singh and another, 2009 (4) RCR (Civil) 821** but the court below failed to take note of the judgment for the reasons best known.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to deal with judgment in **Udey Chand's case (supra)**. A relevant extract from para 17, reads as follows:-

“ 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

out 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 recounting, 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. 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 as full-fledged 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 recount cannot be granted just for the asking. 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 over-emphasised because reasons are the soul of the orders/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 recount on the basis of bare allegations in the election petition would not be a proper exercise of jurisdiction.”

A plain and careful reading of the aforesaid extract shows 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. 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 “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 over-emphasised because reasons are the soul of the orders/judgment. 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. An order for recount on the basis of bare allegations in the election petition would not be a proper exercise of jurisdiction.

Perusal of the impugned order would reveal that on the basis of allegations and counter allegations raised by the parties, the Election Tribunal framed issues and permitted the parties to adduce evidence in support of their respective contentions. The election petitioner Gaurav Papneja appeared in the witness box and examined Jagdish Kumar, his counting agent PW2. On the other hand, the petitioner appeared as his own witness and examined Harvinder Singh, his agent RW-2. It is undisputed position of the case that respondent No. 1 and his agent did not sign the result of election by way of protest. As per plea of respondent No. 1, he raised an issue with regard to wrong counting of votes by filing an application in writing to the Returning Officer. It is none of the requirements in law to implead the Returning Officer as a party in a petition filed under Section 176 of the Act. The respondent who has levelled

allegations against the Returning Officer could not possibly examine the Returning Officer to say something in his favour. On the contrary, it was for the petitioner to examine the Returning Officer to counter plea of the election petitioner either with regard to wrong counting of votes or raising an issue with Returning Officer in this regard. In the circumstances, the petitioner cannot derive any advantage to his contention from failure of the respondent to implead the Returning Officer as a party or his examination as a witness.

As has been rightly held by the trial court that the respondent acted like a prudent person to file an application before the Deputy Commissioner pointing out the alleged illegalities/irregularities in counting of votes at the hands of the Returning Officer. Counsel for the petitioner has failed to point out if respondent No. 1 was asked to explain as to why he did not file the application with the Deputy Commissioner on the same day i.e. 17.1.2016.

The Election Tribunal, on a detailed consideration of the allegations raised by respondent No. 1 and evidence adduced before the Tribunal, appreciated in right perspective, has rightly recorded a finding that the election petitioner has made out a prime facie case for re-counting to be done. It has further been held that fairness and purity in election process is the hall mark of democracy. The elected candidate should not be afraid of scrutiny of ballot paper if nothing wrong has happened in the election process. Taking into consideration the materials on record, basis of findings recorded by the Election Tribunal, I find myself unable to accept contention of the petitioner that the order impugned suffers from an error much less illegality or perversity warranting intervention in exercise of

supervisory jurisdiction of this court. The order impugned prima facie satisfies the requirements laid down by Hon'ble the Supreme Court in **Udey Chand's case (supra)**.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

19.12.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No