

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.26633 of 2017.

Date of Decision: November 22, 2017

Krishan

.....Petitioner

versus

The State Election Commissioner, Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE AVNEESH JHINGAN.

Present: Mr.Pankaj Sharma, Advocate, for the petitioner.

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Surya Kant, J. (Oral)

The petitioner and 4th respondent contested the election of Panch from Ward No.3 of the Gram Panchayat of their village Dupedi, Tehsil Assandh, District Karnal. The undisputed facts are that total 200 votes were polled out of which 68 valid votes were counted in favour of the petitioner and 67 such votes were counted in favour of the 4th respondent. 65 votes were rejected. Consequently, the petitioner was declared elected by a margin of one vote.

[2] Respondent No.4 challenged the election of the petitioner by way of an Election Petition which is maintainable under Section 76 of the Haryana Panchayati Raj Act, 1994. The Civil Court is the Election Tribunal prescribed under the 1994 Act. In his Election Petition (P-2), respondent No.4 specifically averred in para No.9 as follows:-

“...9. That on 10.01.2016 after polling, at the time of counting the election officer/presiding officer also colluded with the respondent No.4 and which vote belt paper was fold in opposite direction as per signal of agent of respondent No.4 were declared rejected due to mark/

impression of selection stamp/seal. It is pertinent to mention here that the 67 votes counted in favour of petitioner and 68 votes in favour of respondent No.4 and approximately 65 votes were declared rejected with intention to declare the respondent No.4 as winner. It is pertinent to mention here that in which votes the major portion of selection stamp/seal was in column of petitioner and which votes were in favour of petitioner the same were rejected intentionally by the presiding officer/election officer. At the time of declaration of winner, the petitioner so many time requested to re-count the polling votes but the officer/election officer did not heed the genuine request of petitioner.....”

[3] Learned Civil Court on the basis of the pleadings of the parties, formed the following issues for adjudication:-

- “...1. Whether the election for the post of panch from ward No.3 of Gram Panchayat Dupedi can be set aside and re-counting of the total polled in favour of petitioner vote for ward No.3 of the panch can be passed?OPP.
2. Whether the petition is not maintainable in the present form?OPP.
3. Whether petitioner has no locus standi to file the present petition? OPR
4. Whether petitioner has not come to this Hon'ble Court with clean hands? OPR
5. Whether the petition is time barred?OPD
6. Relief.....”

[4] At this stage, reference may also be made to Section 176 of the Haryana Panchayati Raj Act, 1994, which empowers the Civil Court-cum-Election Tribunal to scrutinize and compute the votes recorded in favour of each candidate and declare elected a candidate who has secured large number of valid votes. First part of the Section also empowers the Election

corrupt-practices or on other ground mentioned in the said provision.

Section 176 reads as under:-

176. Determination of validity of election enquiry by judge and procedure:-(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or 1[----] 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.

(2) A petitioner shall not joint as respondent to his election petition except the following persons:-

(a) xx xx xx xx

(b) xx xx xx xx

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(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 as 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 candidates, declare the candidates 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 entitled any of the candidates 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.

(5) A person shall be deemed to have committed a corrupt practice-

- (a) xx xx xx xx
- (b) xx xx xx xx
- (c) xx xx xx xx.....”

(emphasis applied)

[5] It may be seen from Section 176[4](b) that where validity of an election is in dispute between two or more candidates, the Civil Court is competent to scrutinize and compute the votes recorded in favour of each candidate and declare a candidate who is found to have largest number of valid votes in his favour to have been duly elected. In the case in hand, the Civil Court-cum-Election Tribunal found that total 200 votes were polled, out of which 65 votes were rejected, namely, 32.5% votes polled in the election were rejected. The difference of votes between winner and losing candidate was only one. Consequently, the Election Tribunal-cum-Civil Court viewed and rightly so that it was a fit case for invoking its powers under Section 176(4)(b) and scrutinize and compute the votes recorded in favour of each candidate.

[6] Having undertaken this exercise, the Election Tribunal found that out of 65 rejected votes, both the parties had no objection against rejection of six votes. In this manner, there remained 59 votes which were to be scrutinized and seen whether those were rightly rejected or not. The Election Tribunal has found that 32 votes polled in favour of respondent No.4 were rejected because the stamp impressions on those votes were though clear in his favour but because of wrong folding of ballot papers, the ink spilled over the opposite side, and according to the counting official, it amounted to stamping on the columns of both the candidates. The Election Tribunal in this regard has relied upon Rule 65 of the Haryana Panchayati Raj Election Rules, 1994 to hold that a ballot paper cannot be rejected merely on the ground that mark indicating the vote is indistinct or

vote is given in favour of more than one candidate provided that intention of

the voter can be clearly deciphered from the ballot paper. The Election Tribunal has found that due to wrong folding of ballot papers, the ink spilled to other columns and a mark appeared in those columns too but the true intention of the voter could be seen from the plain perusal of the ballot paper.

[7] The Election Tribunal has found that out of those 59 votes, 32 votes were polled in favour of respondent No.4 and remaining 27 in favour of the petitioner. In all those 59 votes, the ink spilled to other columns only because of the wrong folding of ballot papers by the Election Staff. The Election Tribunal has thus concluded as follows:-

“... In view of the above discussions and on my scrutinization of 65 rejected votes, I found that only 6 votes out of 65 votes were rightly rejected whereas 59 votes were wrongly rejected by the polling officials. Out of this 59 votes, the 32 votes were counted in favour of petitioner as the intention of the voter could easily be deciphered from the scrutinization of the ballot paper and 27 votes were decided in favour of respondent No.4 Krishan. Therefore, the result of the ward No.3 for the post of PANCH of village Dupedi on recounting is as under:-

Total Vote Polled: 200

Votes counted in favour of petitioner (Dinesh) in counting: 67.

Votes counted in favour of respondent No.4 (Krishan) in counting: 68.

Scrutinization of rejected votes – 65 votes.

Votes rightly rejected – 6 votes.

Votes wrongly rejected – 59 votes.

Out of wrongly rejected votes polled in favour of petitioner (Dinesh)- 32 votes.

Out of wrongly rejected votes polled in favour of respondent No.4 (Krishan)-27 votes.

Total votes after scrutinization.

Petitioner (Dinesh)	=67+32=99.
Respondent No.4(Krishan)	=68+27=95.
rejected votes	=6.....”

[8] We have heard learned counsel for the petitioner at a considerable length. It is not disputed by him that 32 votes were counted in favour of respondent No.4 or 27 votes were counted in favour of the petitioner by the Election Tribunal during recounting. He also concedes that after stamping, the ink spilled to other columns could be due to wrong folding of the ballot papers. He nevertheless submits that once the ink spilled over other columns, it blurred the intention of the voter and all such votes were rightly rejected by the Returning Officer. Should these 59 votes be also excluded from amongst the valid votes, it is the conceded position that the petitioner was rightly declared winner with a margin of one vote.

[9] We are, however, not impressed by the contention. In a democratic process, the will of the voter is supreme. So long as it is ascertainable, it should be given full respect. In the case in hand, it is writ large that out of 59 disputed votes, 32 voters actually cast their votes in favour of respondent No.4 whereas remaining 27 exercised such discretion in favour of the petitioner. It is only on account of an erroneous ministerial process of the folding of ballot papers that the ink spilled to the other columns as well. Such a detectable mistake could not have been taken as a valid ground for rejection of the votes when the intention of the voter is crystal clear.

[10] In the light of these facts, we do not find any error committed

Panch of Ward No.3 of Gram Panchayat of village Dupedi, Tehsil Assandh,
District Karnal.

[11] The writ petition stands dismissed.

[SURYA KANT]
JUDGE

November 22, 2017
mohinder

[AVNEESH JHINGAN]
JUDGE

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