

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

CWP No.9354 of 2015

Date of Decision.15.03.2017

Raj Bahadur Singh and others

.....Petitioners

Vs

State of Punjab and others

.....Respondents

Present: Mr. H.S. Bedi, Advocate
for the petitioners.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. S.S. Sidhu, Advocate
for respondent No.5.

Mr. S.S. Kang, Advocate
for respondent Nos.6 to 9.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The petitioners are aggrieved of the impugned order dated 06.12.2013 (Annexure P-1) passed by the Deputy Registrar Cooperative Societies whereby the election petition filed by one Buta Singh has been accepted and election of the Managing Committee held on 12.08.2013 has been aside with a direction to the committee to hold fresh election after following the procedure. The appeal and revision petition filed against the aforementioned order also met with the same fate.

Mr. H.S. Bedi, learned counsel appearing for the petitioners submits that there cannot be a direction to hold election afresh as Buta Singh had no locus standi to challenge the election, therefore, the petitioners be elected as members of the Managing Committee of Jalal Multipurpose Cooperative Agricultural Service Society Ltd., Jalal. The election was conducted by Harjinder Singh, Inspector Koyar Singh Wala/Returning

Officer. During the course of counting, it was found that out of total 600 ballot papers issued, 597 were get printed but 12 votes were found to be in excess and the total ballots were also not entered which was necessary for the purpose of tallying. The fact remains that the total 12 votes should have been taken out and recounting should have been done amongst the 597 ballot papers, in order to determine the whim of the petitioners as members of the Managing Committee. If the said exercise is done, even then the petitioners would have been found to be duly elected. All these facts have not been taken into consideration, thus, urges this Court for setting aside the order under challenge directing holding of fresh election and the petitioners be elected as member as period of one year and few months is still left.

On the contrary, Mr. S.S. Sidhu, learned counsel appearing on behalf of respondent No.5 submits that now the recounting by excluding 12 votes cannot be done, as the ballot papers were not sealed. A detailed order has been passed by the Special Secretary, Cooperation, Punjab and draws the attention of this Court to para 6 of the impugned order dated 17.03.2015, which reads as under, thus, urges this Court for confirming the orders under challenge by dismissing the writ petition:-

“I have heard the arguments of the counsels for the parties and perused the record available on the file and the original proceedings book. It is the admitted case of both the parties that the Society had purchased 600 ballot papers for the elections. Returning Officer had signed all the 600 ballot papers for use. Out of these 597 ballot papers were used and the 3 unused ballot papers duly signed by the Returning Officer are in the record of the Society. Sh. Buta Singh, Secretary of the Society made the statement on 3.3.2015 in this court that after the counting was done,

petitioners requested for recounting. During re-counting difference in the voters were found, therefore, correction was made in the proceedings book after making necessary cuttings. However, the cuttings made on the votes secured have not been attested by anyone. As regards the excess ballot papers found in the ballot box, the Secretary stated that he has no knowledge as to where from these votes came, and whether there bear the signatures of the Returning Officer or not. Therefore, I am of the considered view that the elections of the Society have not been held in a fair manner. The Returning Officer has not performed the duties casted upon him diligently. Had the Returning Officer been vigilant no excess vote could have been polled. The Returning Officer was given due opportunity to explain his conduct. He was tried to be served through the Assistant Registrar, Cooperative Societies, Phul. Summons were pasted on the door of his house, which according to the Act is made of service. However, he did not appear before this Court and thereafter he was proceeded ex parte. The counsel for the petitioners requested this Court to re-count the votes. This request cannot be accepted, because the Secretary of the Society in his statement has mentioned that the sale of the ballot box was opened in the court of the Joint Registrar but the lock was not opened. Thereafter the box was returned without the seal, which is in the custody of the society and the key is with him. This means the box has remained unsealed since then. Once the seal of the ballot box is broken, no useful purpose will be served by recounting the votes, because the sanctity of the sealed record is lost. It should have been either recounted when the seal was removed, or the seal should have been replaced before the lower Court. The Returning

Officer has failed to verify during the continue process itself, as to which were the excess/unauthorized ballot papers even if no one had raised this issue. It was his bounden duty to establish the correct number of votes polled, and in view of the serious anomaly, should have immediately declared the election void, and taken action as per law. He failed to do so. Strict disciplinary action against him is called for. Since undeniably the election stands vitiated in view of the aforementioned discussion I find it will be in the interest of justice that fresh election in the Secretary be held. Therefore, I dismiss the revision petition.”

I have heard learned counsel for the parties and appraised the paper book. It has been found that despite the Returning Officer had signed 600 ballot papers, only 597 were used and three unused ballot papers are kept/entered in the record of the society. The cuttings made in entries should have been attested by the Returning Officer. Even the request of the petitioner for recounting of the votes by excluding 12 votes, shall not necessary, on the premise that box was returned without seal which is in the custody of the society, therefore, veracity of the ballot papers cannot be ascertained at this stage, as it is too late in a day, in essence, sanctity of the sealed record has been lost. It should have been done either when the seal was removed or the seal should have been replaced before the Court below. The authorities have found that the Returning Officer has failed to verify the aforementioned fact.

No doubt, there is still one year and few months left of the tenure as members of the Managing Committee of the Cooperative Society but no harm or prejudice would be caused in case the election is again ordered to be held. If at all, the petitioners enjoy good reputation amongst

the members, they can still be elected.

For the reasons aforementioned, the orders under challenge are perfectly legal and justified and accordingly upheld. No ground for interference is made out. The writ petition is dismissed.

(AMIT RAWAL)
JUDGE

March 15, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No