

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.3896 of 2015(O&M)

Date of Decision:-09.08.2017

Rattan Lal.

.....Appellant.

Versus

Sub Divisional Magistrate Abohar-cum-Election Tribunal & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. R.S. Chauhan, Advocate for the Appellant.

Mr. Amit Mehta, Senior Deputy Advocate General, Punjab.

Ms. Disha Arora, Advocate for respondent no.2.

JASWANT SINGH, J.

Appellant-Rattan Lal was the elected candidate for the office of Panch of Gram Panchayat, Village Dangar Khera, Block Khuian Sarwar, Tehsil & District Fazilka in the election conducted on 03.07.2013.

The respondent no.2-Narain Chand instituted an election petition on 06.11.2013 before the Election Tribunal, Fazilka, challenging the election of appellant-Rattan Lal, who was declared elected as Panch. The challenge was primarily on the ground that recounting of votes was required because total number of votes polled were 351, five votes stood wrongly cancelled and both the appellant-elected candidate and respondent no.2-election petitioner had secured 173 votes and therefore, appellant was

wrongly declared as the winning candidate by one vote.

Learned Counsel for the appellant has argued that the Tribunal has wrongly ordered recounting of the votes, without appreciating the facts that there is no allegation against the returning officer that the votes were not counted in the presence of all the candidates or that the votes were wrongly cancelled/declared invalid. Since, there was no such allegation, the Tribunal has acted beyond jurisdiction by ordering recounting of votes and consequent declaration of respondent no.2-Narain Chand as successful candidate. It has been further argued that the election petition itself is not maintainable because as per Section 76 of the Punjab State Election Commission Act 1994, the election petition was to be presented by the election petitioner himself. However, the election petition was presented through the counsel. Thus, prayer has been made for allowing the present election petition.

On the other hand, learned Counsel for the respondent has argued that after due service of the election petition upon the respondents impleaded before the Tribunal, the Tribunal had ordered recounting of votes vide its order dated 30.03.2015 and the said recounting was conducted on 15.04.2015 by following the due procedure. The said recounting was conducted in the presence of both the parties and, therefore, at this stage appellant cannot be permitted to challenge the order of recounting of votes, especially when he has participated in the entire process. Hence, prayer has been made for dismissing the present appeal.

After hearing learned Counsel for the parties and perusing the paper book as well as the record, this Court is of the considered view that the present appeal is devoid of any merit and deserves to be dismissed.

A perusal of the record as well as the impugned order would reveal that despite service upon the appellant and the other concerned parties, no one had put in appearance on their behalf before the Tribunal. Consequently, vide order dated 30.03.2015, the Tribunal had ordered recounting of votes wherein, Tehsildar Fazilka was appointed as overall incharge for recounting of votes to be conducted on 15.04.2015. Admittedly, both the parties were present at the time of recounting of the votes. Tehsildar, Fazilka had submitted its report dated 4.5.2015 which reads as under:-

“ Counting of the polled votes in respect of Ward No.6 of Village Dangar Khera (Member Panchayat) was conducted on 15.04.2015 in the meeting hall of the Hon'ble Deputy Commissioner, Fazilka in the presence of the concerned parties, concerned Presiding Officer and his subordinate staff. Returning Officer did not come present, therefore, the counting was done by the Presiding Officer. As per the report made by the Presiding Officer in Form No.9, Sh. Narain Chand and Sh. Rattan Lal, both the candidates have been polled 173-173 Votes and votes of both the candidates are equal. In addition to this, 5 votes were rejected by the Presiding Officer due to following reasons, the details of which is as under:-

- 6. Rejected due to mark on two places.*
- 7. Rejected due to non-mark.*
- 8. Rejected due to non-X mark.*
- 9. Rejected due to thumb impression.*

10. Rejected due to being in the wrong Sarpanch box

(Vote was polled on the election symbol Ghara of petitioner Sh. Narain Chand)

After receipt of the aforesaid report, the Tribunal, by relying upon Memo No.SEC-SA-2013/6031-32 dated 01.07.2013 issued by State Election Commission, Punjab had held that since no vote can be rejected/cancelled due to the reason that it was found from the wrong ballot box, therefore, election petitioner-respondent no.2-Narain Chand was declared as winning candidate, having secured 174 votes against Rattan Lal-appellant-elected candidate who had secured 173 votes.

Admittedly, the recounting was done after due notice to all the affected parties and in their presence. It is also not in dispute that previously, both the candidates had secured 173 votes each and remaining votes were cancelled or rejected. However, the order whereby recounting was permitted, was never laid to challenge by the appellant and in fact he participated in the recounting process. At this stage, when recounting has been held and no allegation of malafides have been levelled against any of the officer involved in recounting process, this Court is of the opinion that the election tribunal had rightly declared Narain Chand as the elected Panch, in view of the Memo No.SEC-SA-2013/6031-32 dated 01.07.2013 issued by State Election Commission, Punjab.

As far as the argument of the learned Counsel for the petitioner that election petition is not maintainable as the same was not presented by the election petitioner himself is concerned, this Court has perused the record and finds that the election petition was indeed presented by the election petitioner along with his counsel as nothing to the contrary has

been recorded or inferred from the zimni order, at the time of presentation. Meaning thereby, there is no violation of Section 76 of the 1994 Act which would bar the election petition to be not maintainable under Section 80 of the 1994 Act.

In view of the above, finding no merit in the present first appeal the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

August 09, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>