

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

F.A.O. No.59 of 2015 (O&M)

Date of Decision: 22.09.2017

Surinder Singh

..... Appellant

Versus

Bahadur Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Mohit Jaggi, Advocate for the applicant/appellant.

Mr. H.S.Dhandi, Advocate for the non-applicant/respondent.

JASWANT SINGH, J. (ORAL)

CM No.253-CII-2015

Prayer in the present application is for condonation of 49 days' delay in filing the present appeal.

Upon notice, reply to the said application has been filed.

For the reasons recorded in the application, duly supported by an affidavit of the applicant/appellant, the same is allowed. Delay of 49 days in filing the present appeal is condoned.

MAIN CASE

The defeated candidate-Surinder Singh, in the election held on 03.07.2013 for the Office of Sarpanch for Gram Panchayat, Village Nanumajra, Tehsil and District SAS Nagar, filed election petition, challenging the election of respondent-Bahadur Singh on the grounds **(i)** that 11 votes had been wrongly rejected by the Presiding Officer **(ii)** that 03 votes had been casted in favour of the

appellant were tied in the bundle of Bahadur Singh. The Election Tribunal, SAS Nagar, vide impugned order dated 20.07.2014, dismissed the election petition, filed by the appellant. Learned Election Tribunal found that the petitioner-Surinder Singh, in his cross-examination, had admitted that at the time of result of votes, agents of both the parties were present in the counting room including five Members of the Election Committee. The result of the counting of votes was unanimously accepted and no party had given any written objection regarding the counting or rejection of votes or wrong appropriation of the votes.

It is an admitted fact that on counting of votes, both the parties were found to have secured 198 votes each and thereby, the result was declared by draw of lots.

In the present appeal, the order dated 20.07.2014, passed by the Election Tribunal, dismissing the petition, has been assailed.

Learned Counsel for the appellant has argued that the draw of lots was not conducted in the presence of the appellant and, therefore, the election of respondent-Bahadur Singh as Sarpanch is vitiated.

On the other hand, learned Counsel for the respondent submits that the draw of lots, as per the procedure laid down in Rule 35 of the Punjab Panchayat Election Rules, 1994, was conducted by the Returning Officer with due intimation to the candidates. The draw of lots was conducted in the presence of the entire deputed election machinery and the same was also videographed. He further submits that the appellant has deliberately chose to stay away and, therefore, it cannot be accepted that the draw of lots was not conducted as per rules.

After hearing learned Counsel for the parties, this Court finds that the Election Tribunal has rightly rejected the election petition, filed by the appellant.

Except the self serving oral evidence of the appellant, no other evidence has been led. The Election Tribunal has examined the entire record and recorded the finding of fact that the election was properly conducted. The videography of the same is also available. There is no violation of Section 66 of the Punjab State Election Commission Act, 1994 read with Rule 38 of the Punjab Panchayat Election Rules, 1994, laying down the procedure in the case of tie. Thus, no case for interference is made out.

Accordingly, the present appeal is dismissed.

Since the main appeal stands dismissed, the pending applications, if any, shall also stand disposed of.

September 22, 2017
Gagan

(JASWANT SINGH)
JUDGE

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