

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

**FAO No. 1971 of 2017 (O & M)**

**Date of decision: 24.04.2017**

Gurdeep Singh

....Appellant(s)

Versus

Presiding Officer, Election Tribunal and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr. Parveen K. Garg, Advocate,  
for the appellant.

**G.S.SANDHAWALIA, J. (Oral)**

**C.M. No. 6609-CII of 2017**

The present application has been filed for condonation of delay of 9 days in filing the appeal on the ground that the papers of the present case got mixed up in the brief of some other case during the preparation of the appeal.

In view of the averments made in the application duly supported by affidavit, the same is allowed.

Delay is condoned.

**FAO No. 1971 of 2017 (O & M)**

The appellant challenges the order dated 09.01.2017 passed by the Election Tribunal, Sangrur whereby, his election petition has been dismissed and the election of respondent no. 2 as Sarpanch of the Gram Panchayat, Village Gajjan Majra, Tehsil Malerkotla, District Sangrur has been upheld. The reasoning which prevailed with the Tribunal was that the father of the appellant was present as an election agent at the time of casting

of votes and at the time of counting of votes. No objection at that point of time had been raised. 5 persons each of both the parties were present at the time when the counting started and the allegation that some signatures were obtained from him on blank papers was not proved. Resultantly, it was held that respondent no. 2 had been correctly declared as a winner and recounting of the votes could not be done at the asking and, therefore, issue no. 2 was decided against the appellant. Similarly, issue no. 1, which was on issue of corrupt practice, was also decided against the appellant and the counting of votes was held to be done in the presence of the election agent of the appellant. Resultantly, the petition was held to be without any merit.

Counsel for the appellant has vehemently submitted that under Rule 33(1)(c) of the Punjab Panchayat Election Rules, 1994, (in short 'the Rules') the candidate and the agents who may be present had to be given reasonable opportunity to inspect all the ballot papers, which in the opinion of the Presiding Officer, is liable to be rejected. It is accordingly submitted that since difference between the appellant and respondent no. 2 was of 4 votes, therefore, the mandate of the said Rule had not been followed and recounting should have been allowed. It is the case of the petitioner that 399 votes were polled and 5 votes were cancelled and 199 votes were polled in favour of the elected candidate and, therefore, he was wrongly declared elected and the appellant had secured 195 votes. He has also relied upon judgment in *Gurtej Singh vs. Darbara Singh, 2000 (3) PLR 344* in support of his contention.

The argument, though attractive on the face of it, but is not sustainable in view of peculiar facts and circumstances of the present case.

A perusal of the election petition, which has been appended, would go on to

show that the election was sought to be set aside on the ground that the counting of votes was not done in the presence of the appellant and the Presiding Officer had worked under the influence of the elected candidate. A recount was accordingly asked for on the ground that initially the appellant had been declared as elected candidate and, thereafter in connivance with respondent no. 2, he was declared as elected candidate. The argument which is now sought to be raised that the rejection of the votes was wrongly done, which would have as such come in favour of the appellant, is without any basis since no specific plea had been taken regarding this aspect. It is settled principle that arguments can only be raised on the strength of the pleadings which have been duly made and the other side has to be given an opportunity to rebut the same. In the absence of any such pleading having been made that the candidate or his agent had not been given opportunity to inspect the ballot papers which were liable to be rejected, the appellant cannot be as such allowed to argue on that basis.

A perusal of the judgment which has now been relied upon in *Gurtej Singh's case (supra)* would go on to show that it was recorded that there was specific ground taken for the non-compliance of the statutory pleadings contained in Rule 33 of the Rules and general facts have also been pleaded. The allegations made had been denied by the elected candidate and other respondents without any further details of particulars in the reply filed. In such circumstances, this Court held that violation of Rule 33 of the Rules would be a good ground for ordering recount of the votes.

Another factor which would go against the appellant would be that the case has a chequered history which has also been noticed by the Election Tribunal. The Election Tribunal initially had ordered recounting of

votes on 01.12.2014 (Annexure A-9). Respondent no. 2 had preferred C.R. No. 8657 of 2014 wherein the said revision had been allowed on 06.07.2015 (Annexure A-10) on the ground that after framing of the issues immediately recount had been ordered without giving any reasons in that regard and there was no such material placed for ordering recount. The Tribunal thereafter again on 20.11.2015 (Annexure A-11) directed recounting of votes keeping in view the margin of only four votes and that the five votes had been shown to be cancelled and that the Presiding Officer had not said anything about the cancelled votes as per Rule 33 of the Rules. The said order had also been set aside on 03.12.2016 (Annexure A-13) in C.R. No. 8052 of 2015 on the ground that recounting has to be done by the Presiding Officer himself.

In such circumstances, once the order of recount has been set aside twice for different reasons and in the absence of any specific pleading having been made, this Court is of the opinion that the appellant cannot be allowed to submit that there is any violation as such of Rule 33 of the Rules, as now alleged in view of the fact that the specific ground had to be pleaded which has not been done. Accordingly, this Court is of the opinion that no case is made out for interfering with the order of the Tribunal as it has been found that the appellant's father was present at the time of counting of votes.

The petition is based on the allegations of corrupt practices also which are defined under Section 108 of the Punjab State Election Commission Act, 1994 and they are also not made out on the reading of the petition. The primary issue, thus, for recount was on the basis of corrupt practices which pertained to bribery etc. by the other side and once that fact was never proved under issue no. 1, therefore, recount cannot be ordered at

the asking which is now sought to be made out.

In such circumstances, no infirmity can be found in the order impugned and accordingly, the present appeal is dismissed in limine.

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| 24.04.2017<br>shivani | (G.S. SANDHAWALIA)<br>JUDGE |
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| Whether reasoned/speaking | Yes/No |
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| Whether reportable | Yes/No |
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