

CR No.6620 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6620 of 2016 (O&M)
Date of decision: 29.05.2018

Poonam

...Petitioner

Versus

Meenu Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harish Bhardwaj, Advocate for the petitioner.

Mr. Shalendar Mohan, Advocate for respondent No.1.

Mr. Saurabh Girdhar, AAG, Haryana for respondent No.4.

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner is in the revision petition against order dated 21.09.2016 passed by Civil Judge (Jr. Division), Gohana adjudicating upon an election petition filed under Section 176 of the Haryana Panchayati Raj Act, 1994. The operative part of the order reads as under: -

“The perusal of the petition shows that the petitioner has specifically alleged that at the time of the counting of votes police was called and the agents of the applicant were sent outside and thereafter the result was declared. With these submissions a prayer for allowing the application has been made. On the other hand, Id. counsel for the respondents stated that applicant and his agents were present at the time of counting of votes. So it is clear that the applicant has challenged the process of counting of the votes and it cannot be said that the present application is beyond pleadings. Further the petitioner has secured 591 votes and the respondent has secured 592 votes and it shows that the respondent was declared winner by the margin of only one vote and in these circumstances, it seems that recounting of votes will settle the controversy. Further the counsel of applicant stated at bar that he will not raise any objection if the recounting is done in

the present case and so recounting will finally decide the present petition as the applicant does not seek any other relief. So in view of the above discussion, the application in hands stands allowed and accordingly disposed of.”

Learned counsel for the petitioner has submitted that without there being any material or evidence available on the file, learned Civil Judge has ordered recount which is not permissible. He has relied upon the following judgments: -

- “(i) Naib Singh Vs. Presiding Officer, Election Tribunal (Deputy Commissioner), Sangrur and other, 2016 (2) L.A.R. 32;
- (ii) P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindeen and others, 1989 (1) SCC 526;
- (iii) Dalvir Singh Vs. Gurdeep Singh and another, 2015 (4) RCR (Civil) 856;
- (iv) Maya Kaur and others Vs. The Presiding Officer, Election Tribunal-cum-SDM, Malerkotla and others, 2016 (2) PLR 543;
- (v) Deepak Sharma Vs. Hardeep Kaur and others, RCR (Civil) 235”

Learned counsel for the respondent on the other hand submitted that the difference of votes between the petitioner and the successful candidate is only one vote and since pleadings are already there, therefore, the Court has correctly ordered recount.

This Court has carefully considered the arguments and with the able assistance of the counsel for the parties gone through the paper book. It is by now well settled that the recount of votes cannot be ordered in normal circumstances or on the mere asking of defeated candidate. The secrecy of ballot(s) has to be maintained and its recount can only be ordered only after recording evidence, when the Court is satisfied that such recount is necessary. In the present case, petition was filed on 27.01.2016 and before recording evidence the Court passed an order which is not permissible.

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In view thereof, the present revision petition is allowed and the order under challenge is set aside. Learned Civil Judge (Jr. Division) is requested to proceed with the election petition expeditiously.

(ANIL KSHETARPAL)
JUDGE

May 29, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No