

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.860 of 2018 (O&M)
Date of Order:08.02.2018

Seema Devi

..Petitioner

Versus

Suman and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Sahu, Advocate,
for the petitioner.

Mr. Amit Kumar, Advocate, for
Mr. Amit Rana, Advocate,
for the caveator-respondent no.1.

ANIL KSHETARPAL, J.

Petitioner has challenged the order passed by the Election Tribunal dated 03.02.2018, ordering recount of votes of Booth No.221.

Petitioner before this court was declared elected. It was the positive case of the respondent (plaintiff in the election petition) that in Booth No.221, the votes which were polled in her favour were counted as votes in favour of successful candidates i.e. petitioner in this Court, whereas the votes which were polled in favour of successful candidate i.e. the petitioner were counted towards her votes. She has given the details of the votes allegedly obtained by her from Booth No.221.

In the election petition, specific assertion in this regard with detail had been given and during the course of evidence she appeared in the witness box and reiterated this fact. She also examined another witness who supported and asserted that in fact the votes polled in favour of the

respondent herein Booth No.221, have been counted as votes of the successful candidate i.e the petitioner herein and vice versa.

The trial court after recording the evidence and after *prima-facie* finding that the only way to resolve the dispute is to order recount of votes of Booth No.221. The court has relied upon provisions of Section 176 (4) of the Haryana Panchayati Raj Act, 1994. Section 176 is extracted as under:--

“176-Determination of validity of election enquiry by judge and procedure.--(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in Question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.

(2) A petitioner shall not join as respondent to his election petition except the following person:-

- (a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates;***
- (b) any other candidate against whom allegations of any corrupt practices are made in the election petition.***

(3) All election petitions received under sub-section (1)

in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(4) (a) If on the holding such enquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5), he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

[aa] If on holding such enquiry the Civil Court finds that-

- i) on the date of his election a returned candidate was not qualified to be elected;*
- ii) any nomination has been improperly rejected; or*
- iii) the result of the election, in so far as it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any noncompliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act,*

election of such returned candidate shall be set aside and fresh election may be held.]

(b) If, in any case to which [clause a or clause a a] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favor of each candidate, declare the candidate who is found to have the largest number of valid votes in his favor, to have been duly elected:

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any to the candidates to be declared elected, on additional vote shall be added to the total number of valid votes found to have been received in the favor of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice-

- (a) who with a view to induce a voter to give or to refrain from giving a vote in favor of any candidate, offers or gives any money or valuable consideration or holds out any promise of individual profit, or holds out any threat of injury to any person; or*
- (b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person; or*
- (c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.*

Explanation 1.- A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election .

Explanation 2.- The expression “vehicle” means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.”

The trial court has also noted that a Full Bench in case of **Radha Kkishan v. Election Tribunal-cum-Sub-Judge, Hissar, 1999(3) PLR 1** of this Court has interpreted the provision and has held that there is no absolute bar to recount of the votes and if some material is produced, the court can order recount. Para 44 is extracted as under:-

“44. Ergo we hold that recounting of votes in such an election cannot be directed on mere asking and in a routine manner. The applicant, if makes definite averments on verification supported by unambiguous details, in accordance with law, supported by

documents, if any, and where the applicant makes out a prima facie case to the satisfaction of the court, nothing prevents the court from ordering scrutiny and computation of votes on recount in the case falling within restricted scope of Section 176(4)(b) of the Act. In other words, the count would not be justified in declining such a relief for the reason that the applicant, irrespective of above, must lead evidence through detailed enquiry. Such detailed enquiry is neither postulated nor would be necessary within the purview of said provisions in the limited cases afore-referred.”

The Hon'ble Full Bench has clearly laid down that if there is a definite averment on verification supported by unambiguous detail which is supported by the documents, if any, the court can order recount of the votes.

Learned counsel for the petitioner has vehemently contended that there is no document.

In the considered opinion of this Court, there cannot be any document, in support of the allegation. The documents are sealed by the officers after counting of the votes. The only thing which needs to be verified is that whether in Booth No.221, the votes which were polled in favour of the respondent herein were counted towards the votes of petitioner-successful candidate and vice-versa.

Learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in **Uday Chand v. Surat Singh and another, (2009) 10 SCC 170**. In ***Uday Chand's*** case, Hon'ble Supreme Court after considering the judgment passed by the Full Bench of this Court in ***Radha Kkishan's case (supra)***, has held that normally on bare allegations in the election petition, the order of recount of the votes cannot be allowed.

Hon'ble Supreme Court nowhere lays down that there cannot be recount in

any case.

Once there is a statutory provision enabling the Election Tribunal to order recount of the votes after *prima facie* finding that controversy in the election petition can be resolved by ordering recount, no error has been committed by the trial court in ordering recount . In the present case, in the election petition, specific assertions were made along with the details and the respondent has supported the aforesaid assertions along with the details in her evidence. The court has found that there is some *prima facie* material available on the file to order recount.

In view thereof, there is no scope for interference in the order passed by the Election Tribunal, dated 03.02.2018.

The civil revision is dismissed.

February 08, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No