

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

102

CR No.6560 of 2017

Date of decision:12.4.2019

Rupinder Kaur

... Petitioner

versus

Saravjeet Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.G.C.Shahpuri, Advocate,
for the petitioner
Mr.Amandeep Gulati, Advocate,
for respondent no.1.

...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner challenges the order of the learned Civil Judge (Senior Division), Sirsa, dated 14.3.2017, by which the petition filed by her under Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the election petition), challenging the election of respondent no.1 herein, has been dismissed.

The challenge to the said respondents' election was essentially on the ground that 177 votes were illegally cancelled by those carrying out the counting process and the rejected votes were not shown to the Returning Officer or to the petitioner, despite a request made in that regard.

It was further contended that some of the votes polled in favour of the petitioner, Rupinder Kaur, were 'placed in the bundle of winning candidate' and that the officials who were counting the votes were actually in connivance with respondent no.1.

A representation having been made by the petitioner on 28.1.2016 (i.e. the date that counting was done, the election having been held on 24.1.2016), by the husband of the petitioner, who was also her polling agent, requesting a recount of votes, the Returning Officer (who is shown to be the Sub Divisional Magistrate, Sirsa), did not accede to the request.

Eventually, 831 votes were shown to be polled in favour of the petitioner, 922 votes in favour of the first respondent herein and 844 votes in favour of the second respondent (the other candidate not elected, i.e. Anita Rani). Hence, respondent no.1, Saravjeet Kaur, was declared to be elected as a Member from Ward no.7, to the Block Samiti, Sirsa.

The essential challenge in this petition, as submitted by Mr. Shahpuri, learned counsel for the petitioner, is that the representation of the petitioner not having been decided by way of any order passed thereupon, the entire election process stands vitiated, and as a matter of fact, recounting should have been got done by the Returning Officer. That not having been done, the election petition was presented to the competent Court.

That Court, after considering the pleadings of the parties, the stand of respondent no.1 of course being that there was no vote illegally cancelled and that the votes that were polled in favour of every candidate were placed in separate bundles (with no votes polled in favour of one candidate being placed in the 'bundle' pertaining to the votes of other candidates), and respondent no.2 also having in fact filed a similar written statement despite the fact that she was a non-elected candidate, the following issues were framed by the trial Court:-

- “1. Whether the petitioner is entitled to relief of declaration that election of respondent no.1 from ward no.7 is against law and is liable to be set aside?OPP
2. Whether the petitioner is entitled to relief of recounting of the votes? OPP
3. Whether the suit if the plaintiff is not maintainable?OPR
4. Whether the petitioner has got no cause of action and *locus standi* to file the present suit?OPR
5. Whether plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court? OPR
6. Relief.”

Upon considering the evidence led by the parties, including the oral evidence of the petitioner herself, she further having examined her husband and polling agent, Heera Singh, as PW2 and Bhoop Singh, Election Assistant, as PW3, with respondent no.1 having examined herself as DW1, one Balwinder Singh as DW2, the Returning Officer as DW3 and Satish Kumar as DW4, eventually the learned trial Court came to the conclusion that the petitioner having failed to state as to whether the persons deployed in the process of counting were government officials or 'private persons', and she having deposed that the application (representation) was moved by her after the first respondent herein had been declared elected, but her husband and polling agent, Heera Singh, having however testified that the application was filed before the declaration of the result, the claim of the petitioner could not be accepted, (seeking that recounting of votes be held).

2. As already recorded in the order of this Court dated 13.12.2018, Mr.Shahpuri, learned counsel appearing for the petitioner, had relied upon Rule 69 of the Haryana Panchayati Raj Election Rules, 1994, which reads as follows:-

“69 Recount of votes—(1) After the completion of the counting the Returning Officer (Panchayat) or such other officers authorized by him shall record in the result sheet in Forms mentioned in sub-rule (2) of Rule 66 the total number of votes polled for each candidate and announce the same.

(2) After such announcement has been made a candidate or, in his absence [counting] agent may apply in writing to the Returning Officer (Panchayat) or the other officer authorized by him, for recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount.

(3) On such an application being made the Returning Officer (Panchayat) or the officer authorized by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.

(4) Every decision of the Returning Officer (Panchayat) or such other officer authorized by him, under sub-rule (3) shall be in writing and contain the reason therefore.

(5) If the Returning Officer (Panchayat) or the officer authorized by him, decides under sub-rule (3) to allow an

application either in whole or in part, he shall—

(a) count the ballot papers again in accordance with his decision;

(b) amend the result sheet to the extent necessary after such recount; and

(c) announce the amendment so made by him.

(6) After the total number of votes polled for each candidate has been announced under sub-rule (1) or sub-rule (5) the Returning Officer (Panchayat) or the officer authorized by him, shall complete and sign the result sheet and no application for a recount shall be entertained thereafter:

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and [counting] agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (2).”

He had therefore submitted that very obviously, upon an application being made to the Returning Officer in terms of sub rule (2), the said officer was bound to decide the same by passing a reasoned order, in terms of what is contained in sub rules (3) and (4) of Rule 69.

He had further submitted that though even in the impugned judgment, the application/representation filed by the petitioner under Rule 69 had been duly exhibited as Ex.P1, with an application also having been made by her to the Deputy Commissioner on the next day, i.e. 29.1.2016 (that document also having been exhibited as Ex.P3), and yet another

application having been filed by the petitioners' husband and polling agent, Heera Singh, (Ex.P2), the trial Court wholly ignored all these facts and held that the claim for recounting could not be accepted.

Thereafter, Mr.Shahpuri had also relied upon a judgment of a coordinate Bench of this Court in Devender vs. Election Tribunal-cum-Civil Judge, 2003(4) RCR (Civil) 43, to submit that this Court had held that even in terms of the aforesaid Rule, an application would be maintainable before the Returning Officer after an announcement of the election had been made, with such application/representation to be made either by the candidate or her/his counting agent.

Still further, it was held that before notifying the result, reasonable opportunity to exercise the right conferred under sub rule (2) of Rule 69 is also to be afforded to a candidate, and as there was failure to provide such opportunity (in that case), a recounting of votes was ordered.

3. Mr.Gulati, learned counsel for respondent no.1, though had naturally opposed the petition to submit that the impugned order did not call for any interference, however, factually he could not obviously deny the statutory provision contained in Rule 69, or the ratio of the judgment aforesaid.

4. Having considered the matter, the statutory provision being very clear, that upon an application/representation being made to a Returning Officer alleging therein any malpractice in the election, including in the counting of votes after they had been cast, the said officer is bound to pass an order on such representation, by giving detailed reasons for accepting or rejecting the same.

It could not be denied even by learned counsel for respondent no.1 that factually no such order was passed by the Returning Officer.

That being so and nothing contrary having been shown to the effect that the consequence of non-decision of a representation must necessarily result in a recount of valid votes being ordered, this petition is allowed with the impugned order passed by the learned trial Court set aside. Recounting of votes is hereby ordered to be made, upon issuing notice to the petitioner and respondents no.1 and 2 by the Returning Officer, such notice being for a period of 1 month, upon the completion of which votes shall be recounted in the presence of parties and their representative.

12.4.2019
pk/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes