

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

CR-1806-2020.
Date of Decision:-03.12.2020.

Sandeep Kaur

..... Petitioner

Versus

The Sub Divisional Magistrate-cum-Election Tribunal,
Gurdaspur, District Gurdaspur, and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. B.S. Baath, Advocate for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

Mr. Amandeep Singh Manaise, Advocate for respondent No.2.

SANJAY KUMAR, J. (Oral)

This civil revision, under Article 227 of the Constitution, arises out of the order dated 02.03.2020 and the consequential order 03.03.2020 passed by the Sub-Divisional Magistrate-cum-Election Tribunal, Gurdaspur (for short, 'the Tribunal'). Thereby, the Tribunal directed the Block Development and Panchayat Officer, Gurdaspur, to undertake recounting of

votes in Ward No.3 Village Manepur, Block Gurdaspur, in relation to the election to the post of Panch of the Gram Panchayat, Manepur, Block Gurdaspur, Tehsil and District Gurdaspur, held on 30.12.2018.

The petitioner herein was declared elected as the Panch in the said election. She secured 55 votes as opposed to the 54 votes secured by the second respondent herein. The second respondent thereupon filed an election petition under the provisions of the Punjab State Election Commission Act, 1994, to declare the election of the petitioner as illegal and void and to further declare her as the returned candidate for the office of the Panch from Ward No.3 of Village Manepur.

While so, the Tribunal passed the impugned order dated 02.03.2020, which reads as follows:-

'File presented and parties called. Counsel of both the parties presented. Counsel for the petitioner recorded statement for filing of replication. Arguments heard in this case. Application of the applicant dated 20.12.2019 is accepted and the order has been passed, which is entered in the file. Order be issued to the B.D.P.O., Gurdaspur for recounting of votes in presence of both the parties and report be presented on 20.03.2020.'

As a sequel, order dated 03.03.2020 was passed by the Tribunal requiring the Block Development and Panchayat Officer, Gurdaspur, to take up the re-counting of votes in Ward No.3 of Village Manepur on 20.03.2020

at 11.00 a.m. He was further directed to submit his report to the Tribunal on the same day by 3.00 p.m. Aggrieved by this turn of events, the petitioner approached this Court by way of this revision.

By order dated 19.03.2020, this Court directed that re-counting of the votes would be subject to the final outcome of this petition.

Mr. B.S. Baath, learned counsel for the petitioner, would point out that the order passed by the Tribunal on 02.03.2020 is bereft of reasons. He would contend that the Tribunal ought not to have directed recount of votes without sufficient grounds being made out therefor. He would place reliance on *Udey Chand Vs. Surat Singh* [2009 (4) RCR (Civil) 821].

This Court finds merit in these contentions. The order under revision is clearly without foundation of reason. It is well settled that even an order passed by an administrative authority, entailing civil consequences, has to be based on reason. This principle would be applicable with greater vigour to a statutory quasi-judicial authority entrusted with the adjudication of an election petition. However, the Tribunal seems to have been completely unmindful of the requirement of recording reasons before ordering recount of votes.

Significant to note, the Presiding Officer of the subject election had filed a written statement before the Tribunal contesting the claim of the second respondent-election petitioner that counting of votes was undertaken in the absence of the parties. The Presiding Officer asserted that the candidates as well as their polling agents were present at the time of counting. He also denied the allegation of the second respondent-election

petitioner that fake and bogus votes were taken into account to declare the petitioner elected. Ignoring the aforestated stand of the Presiding Officer and without even putting it to test, the Tribunal straightway ordered recount of the votes.

In *Udey Chand* (*supra*), the Supreme Court pointed out that, in election law, an order for recount of votes would affect the sacrosanct secrecy of the ballot and such a step should be undertaken only when strong *prima facie* circumstances exist to suspect the purity, propriety and legality in the initial counting of votes. The Supreme Court held that, before an Election Tribunal can order a re-count, two basic requirements have to be established – (i) The election petition seeking re-count of the ballot papers must contain adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded and (ii) evidence must be adduced in support of the allegations. The Supreme Court further held that the Tribunal must be satisfied, *prima facie*, that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order for recount is imperatively necessary.

Viewed in the light of the aforestated legal principle, the Tribunal's orders do not pass muster. The orders under revision cannot be sustained and are therefore set aside.

This civil revision is accordingly allowed. However, keeping in mind the fact that the subject election was held as long back as on 30.12.2018, it would be in the interest of all concerned to have the election petition disposed of as soon as possible. The Sub-Divisional Magistrate-

cum-Election Tribunal, Gurdaspur, is accordingly directed to expedite the hearing of the said election petition and endeavour to dispose it of within six months from the date of receipt of a copy of this order.

Parties shall bear their respective costs.

(SANJAY KUMAR)
JUDGE

December 03, 2020.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.