

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

Date of decision: 20.03.2020

CR No.1802 of 2020 (O&M)

Harjinder Singh

... Petitioner

Versus

Tarlochan Singh and ors.

... Respondents

CR No.1803 of 2020 (O&M)

Abhishek Kumar

... Petitioner

Versus

Mangal Singh and ors.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mrs. Rupinder K. Thind, Advocate for the petitioner.

Mr. LS Sidhu, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

This order will dispose of CR Nos.1802 and 1803 of 2020 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from CR No.1802 of 2020.

Challenge in the present petition has been directed against order dated 25.02.2020 Annexure P5 passed by the Election Tribunal, Khadur Sahib, Tehsil and District Tarn Taran whereby recounting of votes for the post of Panch from Ward No.9 in respect of election held on 30.12.2018 for Gram Panchayat village Sohal, Block Gandiwind, Tehsil

and District Tarn Taran has been ordered.

Notice of motion to respondent No.1.

Sh. LS Sidhu, Advocate accepts notice on behalf of respondent No.1.

Counsel for the petitioner would argue that the impugned order is bereft of reasoning much less recording a finding that a prima facie case is made out for ordering recounting of votes poled on 30.12.2018. It is further argued that the Election Tribunal without examining rival submissions made by the parties passed a very cryptic order as such suffers from arbitrariness and lacking foundation. It is further argued that Hon'ble the Supreme Court in **Suresh Prasad Yadav Vs. Jai Prakash Mishra and ors., 1975(4) SCC 822** has held, reads thus:-

"...this Court has repeatedly said, that an order for inspection and recount of the ballot papers cannot be made as a matter of the course. The reason is two-fold. Firstly such an order affects the secrecy of the ballot which under the law is not to be lightly disturbed. Secondly, the Rules provide an elaborate procedure for counting of ballot papers. This procedure contains so many statutory checks and effective safeguards against mistakes and fraud in counting, that it can be called almost trickery foolproof. Although no hard and fast rule can be laid down, yet the broad guidelines, as discernible from the decisions of this Court, may be indicated thus.

The Court would be justified in ordering a recount of the ballot papers only where:

- (1) the election-petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded;
- (2) on the basis of evidence adduced such allegations are

prima facie established, affording a good ground for believing that there has been a mistake in counting; and (3) the court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties."

Counsel for respondent No.1, on the contrary, has supported the impugned order with the submission that a prima facie case is made out, in view of allegations raised in paras 3 and 4 of the election petition.

I have heard counsel for the parties, perused the paper book particularly various annexures appended with the petition and copy of application for recounting of votes filed by Tarlochan Singh (respondent No.1).

Before advertng to the submissions made by counsel for the parties, it is pertinent to note a relevant extract from operative part of impugned order in Punjabi (translated in English), reads as follows:-

After hearing counsel of the petitioner and respondent, the file was perused. On examining the documents available on file, it has been revealed that counsel for the petitioner has prayed for setting aside order dated 30.12.2018 and recounting afresh. On considering request of the petitioner, application dated 28.01.2019 of the petitioner is accepted and it is ordered for recounting of votes afresh in respect of polling booth No.43 (left side) of Government Senior Secondary School, Sohal, Block Gandiwind, Tehsil and District Tarn Taran), on 18.03.2020.

Perusal of the aforesaid order leaves no manner of doubt that the order impugned is passed without assigning reason that weighed with the Election Tribunal, therefore, suffers from a grave jurisdictional error.

There cannot be dispute about settled position in law that reasons are the soul of an order passed by a judicial or quasi judicial authority on the basis whereof its correctness and validity can be tested by a Court in appeal or revision, as the case may be. In the given circumstances, the order impugned, by no stretch of imagination, can satisfy the principles laid down in **Suresh Prasad Yadav's case (supra)** that was taken into consideration by Hon'ble the Supreme Court in **Udey Chand Vs. Surat Singh and Anr., 2009(10) SCC 170** while dealing with an order passed by the Election Tribunal for recounting of votes in a petition filed under Haryana Panchayati Raj Act, 1994. In this view of the matter, I find merit in contention of the petitioner that impugned order cannot be allowed to sustain and accordingly set aside.

In view of what has been discussed hereinbefore, the petitions are allowed. The impugned orders are set aside. The matter is remitted to the Election Tribunal for decision of the application(s) for recounting of votes afresh, in accordance with law. The Election Tribunal shall dispose of the applications within a period of one month w.e.f. 30.03.2020.

20.03.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No