

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

CR-2106-2020 (O&M)

Date of Decision : November 19, 2020

Kiranbir Kaur

..... PETITIONER(S)

VERSUS

Paramjit Kaur and others

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Ms. Rupinder K. Thind, Advocate, for the petitioner.
 Mr. Anurag Chopra, Advocate, for respondent No.1.

...

Sanjay Kumar, J.

CM-7677-CII-2020

The application is ordered.

Exemption is granted as prayed for.

CR-2106-2020 (O&M)

This revision was filed under Article 227 of the Constitution
and arises out of the order dated 13.07.2020 passed by the Election
Tribunal, Tarn Taran. Thereby, the Election Tribunal directed recounting of

Votes be undertaken on 06.08.2020 for Booth No.49, Village Chhapa,

Block Gandiwind, Tehsil and District Tarn Taran, in relation to the election held on 30.12.2018 to the post of Sarpanch of the Gram Panchayat of Village Chhapa.

629 votes are stated to have been polled in total at Booth No.49, out of which 294 votes were in favour of the first respondent while 299 votes went in favour of the petitioner. 36 votes were cancelled. Thereby, the petitioner was declared elected as the Sarpanch of the Gram Panchayat, Village Chhapa.

As the petitioner was declared elected as the Sarpanch, the first respondent herein filed the subject Election Petition in Case No.9 of 29.01.2019 under the provisions of the Punjab State Election Commission Act, 1994 (for brevity, 'the Act of 1994'), wherein the aforestated order dated 13.07.2020 was passed.

Significantly, the order dated 13.07.2020 recorded that the petitioner had accorded her oral and written consent to the recounting of votes. The Election Tribunal further recorded that though it found no reason to suspect the procedure of election and polling, on the demand of the first respondent herein and the oral and written consent of the petitioner, the recount was being ordered.

By order dated 05.08.2020, this Court took note of the statement of the petitioner that she had never agreed to the recounting of votes, as noted in the order under revision, and stayed its operation.

Having heard Ms. Rupinder K. Thind, learned counsel for the petitioner, and Mr. Anurag Chopra, learned counsel for the first respondent, this Court finds that the case turns upon whether or not the

petitioner consented to the recounting of votes. The order dated 13.07.2020 records that the petitioner gave a statement on 18.02.2020 to the effect that she had no objection if such recounting was done.

The order further records that she again appeared along with her counsel on 13.07.2020 and while referring to her statement made on 18.02.2020, she stated that she would abide by the same.

Relevant documents have been placed on record. Perusal thereof reflects that the Election Tribunal passed a *zimni* order on 18.02.2020, which reads as follows:-

“File produced. Case was called. The parties are present. The respondent requested for some more time to file written arguments. Opportunity given. The file be put up on 24/03/2020 for written arguments by the respondent. The respondent got her statement recorded which is taken on record.

Sd/-
Sub Divisional Magistrate-
cum-Election Tribunal,
Tarn Taran

18/02/2020”

The statement allegedly made by the petitioner on 18.02.2020 reads as under :-

“Copy Case No. 09 Paramjit Kaur --- Kiranbir Kaur village Chapa --- Honourable SDM Taran Taran 10/08/2020

Statement of Kiranbir Kaur daughter of Gurmeet Singh wife of Jarnail Singh resident of village Chapa Tehsil and District Tarn Taran. In reference to the case I state that, I am the elected Sarpanch of village Chhapa. In the Gram Panchayat

Election of 2018 I got 299 votes and Paramjit Kaur got 294 votes and that I have no objection for the recounting of votes.

RO & AC

Sub Divisional Magistrate-
cum-Election Tribunal,
Tarn Taran

18-02-2020”

The *zimni* order dated 13.07.2020 reads as follows :-

“File produced. Case has been produced. The petitioner Paramjit Kaur and her husband Palwinder Singh are present. The counsel for the petitioner is not present. The respondent and her Counsel have come present and stated that they have already given statement in writing to the Court that if recount is made, she shall have no objection. She has further demanded that at the time of recount, video-graphy be conducted. The petitioner has filed the case for the recount. Therefore on the consent of both the parties, order of recount is given. Order for recount on 06/08/2020 is passed separately, the file be put up again on 20/08/2020.

Sd/-
Sub Divisional Magistrate-
cum- Election Tribunal,
Tarn Taran

13/07/2020”

A conjoined reading of the aforestated documents clearly supports the case of the petitioner that she never gave her consent to the recount of votes, as recorded by the Election Tribunal. The *zimni* order dated 18.02.2020 begins by recording that the petitioner, being the respondent in Case No.9 of 29.01.2019, requested for some more time to file written arguments and that an opportunity was given to her. The

Tribunal then recorded that the file should be put up on 24.03.2020 for written arguments by the petitioner. The next statement reads to the effect that the petitioner got her statement recorded which was taken on record.

It is by the said statement that the petitioner is alleged to have consented to the recounting of votes. The apparent contradiction between the earlier part of the *zimni* order and the so called statement which was gotten recorded by the petitioner is manifest. Having sought more time to file written arguments, the petitioner would hardly have gotten her statement recorded on the same day, conceding the prayer of the other side for recounting of votes. This improbable and illogical conduct attributed to the petitioner defies comprehension and acceptance. It is unfortunate that an Election Tribunal, which is expected to be non-partisan and unbiased, has resorted to fabrication of such orders and statement so as to support one party at the cost of the other. The Sub Divisional Magistrate, Tarn Taran, necessarily has to be conscious of the fact that he is discharging quasi-judicial functions in the capacity of being an Election Tribunal constituted under the Act of 1994 and cannot stoop to the level of taking sides in the manner that he has done in this case.

This Court therefore deems it appropriate to caution the Sub Divisional Magistrate, Tarn Taran, to be conscious of the nature of the duty cast upon him by the statute and be mindful of the fact that his orders are subject to judicial review by this Court.

The order dated 13.07.2020, based on the fabricated statement and consent of the petitioner, is accordingly set aside. In the light of the fact that the petitioner is stated to have completed two years of

her elected term already, there shall be a direction to the Election Tribunal, Tarn Taran, to dispose of Election Case No.9 of 29.01.2019 as expeditiously as possible and preferably, within three months from the date of receipt of a copy of this order. The Election Tribunal shall be mindful of the fact that the due procedure that has to be followed in dealing with this case has been prescribed under Section 81 of the Act of 1994 and endeavour to abide by the same in letter and spirit.

The Civil Revision is accordingly allowed.

In the circumstances, there shall be no order as to costs.

November 19, 2020
Kang

(Sanjay Kumar)
Judge

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