

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

CWP No.14877 of 2020 (O&M)

Date of Decision:-02.12.2021

Swaran Singh and another

.....Petitioners.

Versus

Punjab State Election Commission and others

.....Respondents.

**CORAM: *HON'BLE MS. JUSTICE RITU BAHRI*
*HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Mr. Raghav Gulati, Advocate and
 Mr. Gagandeep Jammu, Advocate
 for the petitioners.

 Ms. Anu Pal, D.A.G, Punjab
 for respondents No.1 to 3.

 Mr. Suvir Sidhu, Advocate
 for respondent No.4.

 Mr. G.S. Punia, Senior Advocate with
 Ms. Harveen Kaur, Advocate
 for respondent No.5.

RITU BAHRI, J. (Oral)

The petitioners have approached this Court for cancellation of the order dated 10.09.2020 (Annexure P-4) passed by respondent No.3.

By way of the Election Petition No.4 titled as “Jarnail Singh Versus Swaran Singh and others”, Jarnail Singh (respondent No.4 herein) had challenged the elections of Sarpanch of the Gram Panchayat and vide

order dated 10.09.2020 (Annexure P-4), the Presiding Officer, Election Tribunal-cum-Sub-Divisional Magistrate, Ahmedgarh, District Sangrur had directed for re-counting of the votes. The parties were directed to be present on 22.09.2020 at 10.00 A.M. for re-counting. Even the FIR No.117 dated 30.12.2018 under Sections 353, 186 and 506 IPC was registered at Police Station Sadar Ahmedgarh, District Sangrur against respondent No.4 Jarnail Singh and some other accused, which is annexed in this petition as Annexure P-1.

On 18.09.2020, while issuing notice of motion for 25.09.2020, this Court had ordered that the result of recounting shall be kept in abeyance. Thereafter, on 21.01.2021, this Court was informed that recounting had been carried out and the result was directed to be produced before this Court in a sealed cover. On 29.01.2021, a direction was given to the counsel for the State to inform the concerned authorities to preserve all the ballot papers and make them available to this Court on the next date of hearing. On 05.02.2021, pursuant to the order dated 29.01.2021, the record, duly sealed in a trunk and a small cloth bag, received in the Court and it was opened in the Court and perused. It was ordered to be re-sealed. The Registrar (Judicial) was directed to keep the duly sealed complete record with him and it was ordered that the same be not got inspected without permission of the Court. Respondent No.3 was directed to appear in person in the Court on the next date of hearing.

Thereafter, on 08.03.2021, respondent No.3 Mr. Vikramjeet Singh Panthey, Sub-Divisional Magistrate, Ahmedgarh, District Sangrur

had appeared in the Court. The sealed record was opened in the Court and was examined with the assistance of Sub-Divisional Magistrate and the Court observed that they have come across that certain numbers of ballot papers were in torn condition and after seeing all the ballot papers, it was found that all the ballot papers can be reconstructed with little efforts. Accordingly, respondent No.3 was directed to get the torn ballot papers reconstructed and to count them against the name of the candidate to whom the votes had been polled. It was further ordered that the ballot papers be counted accordingly and the whole exercise would be video-graphed in the presence of both the parties or their representatives within two weeks from that day and the result thereof in a sealed cover would be made available to the Court on the next date of hearing. The original record was also ordered to be re-sealed and was entrusted to respondent No.3. Even the statement of respondent No.3 had been recorded to this effect and the same was taken on record as Mark-A. Respondent No.3 was again directed to remain available in the Court on the next date of hearing i.e. 31.03.2021.

A perusal of the order dated 31.03.2021 shows that respondent No.3 again put in appearance in the Court and as per his report, only 162 ballot papers could be reconstructed whereas 109 ballot papers were beyond reconstruction as all the torn pieces of those ballot papers were not in the preserved record. This Court appreciated the assistance rendered by the Sub-Divisional Magistrate, District Sangrur and the result of the second recounting had been handed over by respondent No.3 to the Court in a sealed over and the same was taken on record.

Today, the present civil writ petition has come up for hearing before this Court. Since the result of recounting of votes is part of the record in a sealed cover and the matter is pending before respondent No.3- Presiding Officer-cum-Sub-Divisional Magistrate, Ahmedgarh, District Sangrur, this petition is being disposed of, at this stage, with a direction to the Registry to send the recounted-record in a sealed cover to respondent No.3 and the respondent No.3 is directed to decide the matter in accordance with law and to pass an appropriate order.

It is made clear that as the recounting of votes has already been done pursuant to the order passed by this Court, the final order will be passed by respondent No.3 on the basis of recounted-record, which is being sent to respondent No.3 in a sealed cover, within a period of six weeks from the date of receipt of the certified copy of this order.

The present civil writ petition is, accordingly, disposed of.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

December 02, 2021
Yag Dutt

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*