

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

Sr. No.215

Civil Revision No.2505 of 2020

DATE OF DECISION: February 08, 2021

KULDEEP SINGH

..PETITIONER

VERSUS

**PRESIDING OFFICER, ELECTION TRIBUNAL, BLOCK ANDANA-
CUM-SDM, MOONAK AND OTHERS**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Manish Kumar Singla, Advocate with
Ms. Shikha Singla, Advocate,
for the petitioner.

Mr. Harinder Sharma, Advocate,
for respondent No.2.

Mr. Dinesh Kumar Sharma, Advocate,
for respondent No.3.

Mr. Kuljinder Singh Sra, Advocate,
for respondent No.4.

SUDHIR MITTAL, J. (ORAL)

This petition has been filed for setting aside order dated
30.10.2020 (Annexure P-5) whereby the Election Tribunal, Block Andana at
Moonak has directed recount of votes.

Election to the post of Sarpanch of Village Bishanpura
Khokhar, Tehsil Moonak, District Sangrur was held on 30.12.2018 in which
the petitioner was declared elected. His election was challenged by
respondent No.2 vide election petition dated 30.01.2019. Although, the

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prayer made of setting aside the election has been declined, relief of recounting has been granted. The margin between the petitioner and respondent No.2 was of 08 votes.

Learned counsel for the petitioner has argued that relief of recounting could not have been granted in the absence of a prayer therefor. The issue regarding the election being void has been decided in favour of the petitioner and thus, the Election Tribunal has gone beyond the prayer made in the election petition. The next argument raised is that the election petition was liable to be rejected on the ground of non-impleadment of necessary parties. It has been submitted that in the election petition allegations of corrupt practices have been made against the Returning Officer but the said Returning Officer has not been made a party. Reliance has been placed upon '*Asha Rani vs. Barjinder Kaur and others, 2010(66) R.C.R.(Civil) 129*'. Further, it has been argued that the impugned order is liable to be set aside on the short ground that the Election Tribunal could not delegate its power. A perusal of the impugned order shows that the Election Tribunal has directed the Tehsildar Moonak to conduct the recount and this is impermissible in law. With reference to this proposition, reliance has been placed upon '*Gurnam Bindra Singh vs. Kulwant Singh and others, 2010(4) R.C.R.(Civil) 367*'. The next submission is that the material particulars in support of the plea for recounting have not been pleaded and on account of this reason also the election petition deserves to be dismissed. In this regard, reliance has been placed upon '*Preet Mohinder Singh vs. Kirpal Singh, 2001(2) R.C.R.(Civil) 647*' as well as '*Ram Sukh vs. Dinesh Aggarwal, 2009(4) R.C.R.(Civil) 585*'. The final argument is

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that the election petition has not been properly verified. The verification should have been strictly in accordance with the Order 6 Rule 15 of the CPC and the same having not been done, the election petition was liable to be fail. For this purpose, reliance has been placed upon '**Baldev Singh vs. Shinder Pal Singh and another, 2006(4) R.C.R.(Civil) 891**'.

In response, learned counsel for respondent No.2 submits that a perusal of the statement of Tarun Kumar referred to in the impugned order shows that at the time of counting gun shots were fired outside the booth and the present police officers commanded for faster counting of votes. Thus, Annexure P-9 was wrongly filled. This establishes that there may have been an error in counting also and the margin being very small, the order of recount was just and fair. In this regard, reliance has been placed upon '**Mandher Singh vs. Mangal Singh, 2000(3) PLR 835**'. Regarding non-joinder of necessary parties, it has been argued that no objection in that regard was taken in the written statement filed before the Election Tribunal and thus, the petitioner would be deemed to have waived his right to raise this objection. Learned counsel for the respondent has placed reliance upon a Division Bench judgment of this Court in '**Roop Singh vs. Deputy Commissioner, 2006(6) R.C.R.(Civil) 964-DB**' to argue that even though there is no specific provision regarding recounting in the Punjab State Election Commission Act, 1994 (hereinafter referred to as the Act), relief of recounting can still be granted. Finally, it has been submitted that Rule 33 of the Punjab State Election Rules, 1994 providing for endorsement of the Returning Officer on the cancelled votes has not been complied with. The rule is mandatory and thus, order of recount was proper. He places reliance

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upon a Single Bench judgment of this Court in '**Gurtej Singh vs. Darbara Singh, 2000(2) R.C.R.(Civil) 525**'.

In response to the argument of counsel for respondent No.2 that the right to object to non-joinder of necessary parties has been waived, learned counsel for the petitioner places reliance upon '**Gurlal Singh vs. Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others, 2010(5) R.C.R.(Civil) 474**' and argues that the provision of the Act are mandatory in nature and the principle of waiver is not applicable in such cases.

From the case set out by the rival parties, the primary question that emerges is regarding the maintainability of the election petition and applicability of the principle of waiver. Learned counsel for the 2nd respondent has not disputed the fact that the Returning Officer was not impleaded as a party in the election petition. A perusal of the election petition which is on record as Annexure P-4 shows that serious allegations have been made against the Returning Officer. It has been averred that he was influenced by the other side by getting calls made through high officials and also through the police. Due to immense pressure, he buckled and conducted a recount although the second respondent had already been declared elected. In **Asha Rani (supra)** also allegations were made against the Returning Officer and the Presiding Officer but neither of them were made parties to the election petition. This Court held that such an election petition would not be maintainable. The said decision is squarely applicable to this case and consequently, I have no option but to hold that the election

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petition was not maintainable in the absence of impleadment of the Returning Officer.

To counter the case of the petitioner, counsel for respondent No.2 has argued that the right to object to maintainability of the election petition had been waived by the petitioner as in his written statement no such objection was raised. The principle of waiver would consequently apply. In the case of *Gurlal (supra)* the election petition was not presented by the petitioner and no objection on this ground was raised before the Election Tribunal. The issue was raised in the appeal filed before this Court and was resisted by relying upon the principle of waiver. This Court, after considering the law on the subject and after referring to judgments of the Supreme Court in *Udhav Singh vs. Madhav Rao Scindia, AIR 1976 SC 744* as well as *Jyoti Basu vs. Debi Ghosal, AIR 1982 SC 983(1)* held that the right to challenge an election being purely statutory in nature has to be strictly construed and cannot be diluted by importing principles of equity. Election law is peremptory in nature and cannot be waived by any action of a party. In view of this authoritative pronouncement, it is held that the principle of waiver cannot apply in election matters.

In view of the aforementioned discussion, it has to be held that the election petition was not maintainable and should have been dismissed outright. The order of recount is consequently bad in law. No order could have been passed on the election petition. Moreover, the order of recount is beyond the relief sought by the election petitioner and could not have been granted in any case.

The other arguments raised by the counsel for the parties are not being dilated upon since the election petition itself was not maintainable.

Accordingly, the writ petition is allowed and impugned order dated 30.10.2020 (Annexure P-5) is quashed. In case recount has already been conducted, the result thereof need not be declared.

February 08, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>