

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

1. FAO No.3065 of 2020 (O&M)

Gurjeet Kaur

... Appellant

Versus

Election Tribunal-cum-Sub Divisional Magistrate, Faridkot
& others

... Respondents

2. FAO No.3066 of 2020 (O&M)

Raunki Singh

... Appellant

Versus

Election Tribunal-cum-Sub Divisional Magistrate, Faridkot
& others

... Respondents

Date of decision: 23rd November, 2021

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. C.S. Jattana, Advocate for the appellants.

Mr. Suveer Sheokand, Addl. Advocate General, Punjab
for respondent No.1.

Mr. Ravish Bansal, Advocate for respondent No.2.

Service of remaining respondents – dispensed with.

FATEH DEEP SINGH, J.

Though these two first appeals against orders have been filed by two different persons but on account of being pertaining to the orders of same very authority i.e. the Election Tribunal-cum-Sub Divisional Magistrate, Faridkot dated 22.12.2020 whereby the Tribunal has ordered recounting of the votes, as well as in the light of being similar facts and

law-points involved and also being the outcome of orders arising out of Election Petitions under Section 76 of the Punjab State Election Commission Act, 1994 (in short, 'the Act') are being conveniently disposed off together.

Heard Mr. C.S. Jattana, Advocate for the appellants; Mr. Suveer Sheokand, Addl. Advocate General, Punjab appearing for respondent No.1; Mr. Ravish Bansal, Advocate representing respondent No.2 in both the appeals and perused the records of the case.

In the Panchayat elections pertaining to village Beer Bholuwala, District Faridkot, Sukhpreet Kaur was contesting against Gurpreet Kaur for the post of Sarpanch whereas Mandeep Singh was contesting against Raunki Singh for the post of Panch of the Gram Panchayat. The polling to both these posts was held on 30.12.2018 and upon completion of election process, during the course of counting there is claim and counter-claim of skirmishes between the opponent groups which has delayed the counting and declaration of result. In FAO No.3066 of 2020, it is alleged that out of the total 329 votes, 306 votes were polled and Raunki Singh was declared as winner by a margin of one vote by the Returning Officer to the post of Panch (SC). Similarly, in the election for the post of Sarpanch (FAO No.3065 of 2020) the same very day it is alleged that appellant Gurjeet Kaur was declared as elected to the post of Sarpanch by a margin of three votes by the Returning Officer. It is alleged that the appellant Gurjeet Kaur secured 154 votes while

respondent No.2 Sukhpreet Kaur secured 151 votes and one vote was cancelled. Subsequent thereto, the Election Tribunal-cum-Sub Divisional Magistrate, Faridkot ordered recounting of votes vide order dated 22.12.2020 in both these elections against which these two election petitions under Section 76 of the Act have come about.

Appreciating the submissions of the two sides, no doubt under Section 93 of the Act, the Election Tribunal is bound to communicate its orders to the Election Commissioner immediately along with copy for publication in the official gazette and in terms of this provision the Tribunal has no power to direct any authority to hold fresh election of Panch or Sarpanch. Furthermore, in terms of Section 94 of the Act, any order of the Election Tribunal comes into operation immediately on its pronouncement. Section 100 of the Act creates provision for appeal to this Court from every order made by an Election Tribunal under Section 87 or 88. Section 87 of the Act pertains to procedure of election petition whereas Section 88 involves the allegations levelled in the election petition based on any corrupt practice. It needs to be reiterated here that at the time of counting of votes, Returning Officer has the power to reject any ballot paper if it falls under any of the clauses provided in Section 80 (2) of the Act. But before it does so, the Returning Officer is required to allow each counting agent with an opportunity to inspect the ballot paper and a detailed procedure has been prescribed therein how to deal with such an eventuality. It casts a heavy burden and

duty upon the Returning Officer to enumerate the reasons why he decides to recount the votes and if recounting is to be done that has to be done in terms of Section 80 and 81 of the Act and upon doing so shall amend the result sheet accordingly.

Reverting back to the instant cases, specific reasons have been enumerated in the case of Raunki Singh (FAO No.3066 of 2020), whereby the Tribunal is of the view that in the Presiding Officer's diary the total number of votes as mentioned do not tally with each other. It is specifically mentioned therein that in Form No.9 on the upper side there is mention of 309 votes and in the form 316 votes have been mentioned. Whereas invalid votes in the upper side are shown to be 2 and down below in the form, number of invalid votes is shown to be 11, and thus, there is strong disparity which creates suspicion in the mind of the Tribunal that all was not well with the counting.

In Gurjeet Kaur's case (FAO No.3065 of 2020), the Tribunal in the impugned order has held that the total number of votes as mentioned in the diary of the Presiding Officer does not tally with each other which has necessitated recounting of votes. As per the impugned order, in Form No.9 on the upper side 309 votes have been mentioned and down below in the form there is mention of 316 votes. Similarly, invalid votes in the upper side of the Form are shown to be 2 and down below in the form, they are shown to be 11.

In the light of what has been detailed and discussed by the Tribunal, shows that there is serious irregularity in the counting as a consequence of which the number of valid, invalid votes do not tally correctly with each other in the Presiding Officer's diary, as a result of which a strong suspicion has arisen in the mind of the Tribunal that all was not well with the counting and has rightly ordered recounting of the votes. More so, mere counting of the votes by physical means would certainly to the mind of this Court clear the air over this suspicion and no prejudice is likely to be caused to any of the parties and which as per the impugned orders have to be done in the Court before the officers involved in the election process which entire process has to be videographed. Thus, there is no illegality or perversity which could affect the impugned findings under challenge which needs to be upheld. Both the appeals are hopelessly without merit and are thus outrightly dismissed.

(FATEH DEEP SINGH)
JUDGE

November 23, 2021

rps

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