

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

FAO No.3135 of 2021 (O&M)

Date of decision: 26th November, 2021

Sukhjinder Kaur

... Appellant

Versus

Raj Kaur & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sandeep Bansal, Advocate for the appellant.

Mr. Manish K. Singla, Advocate
for the caveator/respondent No.1.

FATEH DEEP SINGH, J.

An election to the post of Sarpanch of Gram Panchayat Surjan Bhaini, Tehsil Moonak, District Sangrur, which was notified by the Gazette Notification, was held on 30.12.2018 in which appellant Sukhjinder Kaur and respondent No.1 Raj Kaur contested against each other in which other respondents were the officials manning the election process. After the election upon counting of the votes, results were declared whereby Sukhjinder Kaur was declared elected by a margin of one vote wherein 14 votes were cancelled/held invalid.

It is on representation/complaint, recounting took place but no ambiguity was found out. It is thereafter, Raj Kaur filed an election petition under Section 76 of the Punjab State Election Commission Act, 1994 (in short, 'the Act') against Sukhjinder Kaur and others challenging the result of these elections claiming it to be impregnated with

corruption, malpractices and adoption of illegal process. It is vide impugned order dated 10.11.2021, the Tribunal ordered recounting of votes to be undertaken on 26.11.2021 at 11.00 a.m. in the office of SDM, Moonak under the supervision of Naib Tehsildar. The same is subject matter of the instant appeal.

Heard Mr. Sandeep Bansal, Advocate for the appellant; Mr. Manish Kumar Singla, Advocate for the caveator/respondent No.1 and perused the records of the case.

Under Section 93 of the Act, the Election Tribunal intimates and communicates the orders of the results to the Election Commissioner as soon as possible along with its candidate for facilitation publication in the Government Gazette and therefore does not empower any Tribunal to order holding of fresh elections to the post of Sarpanch or a Panch whichever is there. The order of an Election Tribunal comes into operation by virtue of Section 94 of the Act upon its pronouncement whereas Section 100 of the Act has ensured provision for filing of an appeal before this Court against any order amenable under that very provision before this Court. Sections 87 and 88 of Act lay down the procedure of election petitions especially where allegations of corrupt practices are made.

By virtue of Section 80 (2) of the Act, Returning Officer has the power to reject any ballot paper and before doing so is under obligation that counting agent of a party is shown the same with an opportunity to inspect the said ballot paper for which a separate

procedure has been prescribed under the Act. The Returning Officer is under obligation to enumerate the reasons why he opts for recounting of the votes in term of Sections 80 and 81 of the Act and if any ambiguity is found, is under bounden duty to amend the result by adopting the prescribed procedure.

In the instant case, admittedly as has been submitted by the counsel for the two sides, there is difference of only one vote between successful and unsuccessful candidates and therefore, caution is to be taken, over the very counting of votes and the ones which have been declared as invalid in the light of the very paper-thin victory. Learned counsel for the appellant could not convince how there has been adoption of illegal procedure by the Presiding Officer during the time of counting and declaration of the result. More so, recounting is in the office of SDM under the very supervision of the Naib Tehsildar and therefore, ensures fairness in the said process. The ratios cited by learned counsel for the respondent in **‘Gurjeet Kaur vs. Election Tribunal-cum-SDM Faridkot & others’** (FAO No.3065 of 2020 decided on 23.11.2021 by this Court); **‘Sadhu Singh vs. Darshan Singh & another’** 2006(4) RCR (Civil) 55; **‘Roop Singh vs. Dy. Commissioner & others’** 2006(6) RCR (Civil) 964; **‘Renu Bala vs. D.C. Fatehgarh Sahib & others’** (CR No.6640 of 2008 decided on 03.12.2008 by this Court) and **‘Ajaib Singh vs. Presiding Officer, Election Tribunal, Mansa & others’** 2015(4) PLR 628 have been duly considered. Thus, in the light of what has been detailed and discussed above and perusing the orders under

assail, since the very effort has been made to bring about transparency in the counting process and declaration of result and in the absence of any worthwhile objection raised at the time of counting and challenging afterwards the ultimate findings of the results shows a belated effort by the party for a motivated cause.

No doubt, under Section 89 (1) of the Act read with Rule 33(2)(c) of the Punjab Election Rules 1994, for rejection of a ballot paper reasons have to be assigned and its absence is a clear violation of Rule 33(2)(c) of the Rules. By virtue of Section 75(1) of the Act, there has been legitimate delegation of powers for the purposes of recounting of the votes which the Election Tribunal has been vested and there is no illegality in the same. There is nothing material pointed out to the Court which could adversely impact the findings under challenge made by the Presiding Officer of the Election Tribunal, necessitating intervention by this Court. There appears to be no merit in the instant appeal which stands dismissed.

(FATEH DEEP SINGH)
JUDGE

November 26, 2021

rps

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