

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

**CWP No.5876 of 2021
Date of decision: 27.09.2022**

Surinder Singh and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. D.S. Sobti, Advocate,
and Mr. Somnath Tayal, Advocate,
for the petitioners.

Mr. Navdeep Chhabra, Sr. DAG, Punjab.

Ms. Anu Chatrath, Senior Advocate,
with Mr. Nishant Maini, Advocate,
and Mr. S.P.S. Tinna, Advocate,
for respondent No.3.

Mr. S.P.S. Sidhu, Advocate,
for respondent No.4.

Mr. Beant Singh Seemar, Advocate,
for respondent No.5.

Mr. Raman Mohinder Sharma, Advocate,
for respondent No.6.

Mr. Abhimanyu Tiwari, Advocate,
Mr. Nandan Jindal, Advocate,
and Mr.Satvik Bansal, Advocate,
for respondent Nos. 7 and 8.

Ritu Bahri, J.

Petitioners are seeking a writ in the nature of mandamus directing respondent No.2 to declare the result as per the actual counting and as per Form-35 (Annexures P-6 and P-7) already prepared for Ward Nos.8 and 2, Lehra Gaga, wherein petitioner Nos. 1 and 2 were elected as the winning candidates of the respective wards and ignore the forged and fabricated

Form-35, prepared by respondent No.4-Sub Divisional Magistrate-cum-Returning Officer, Lehra Gaga, to declare respondent Nos. 7 and 8 elected from Ward Nos. 8 and 2 respectively.

Present petition has been filed by two candidates namely, Surinder Singh from Ward No.8 and Surinder Kaur from Ward No.2, independent candidates. Their case is that they had defeated the rival Congress candidates i.e. respondent Nos.7 and 8 from the respective wards. After declaration of the result, only certificates were to be handed over by respondent No.4, who was the then *Ex. Officio* Returning Officer for the elections of Municipal Council, Lehra Gaga. As per petitioners, after declaring them (petitioners) as winners, as independent candidates, respondent Nos.4 and 5 forged Form-35. Petitioners have placed on record videography of their celebrations (uploaded in a CD) as Annexure P-1. Stills of the aforesaid videos showing celebrations of winning of petitioners are annexed as Annexure P-2. They have also placed on record CD (Annexure P-3) showing that the news channels also videographed their victory. Counting was done at Baba Hira Singh Bhattal Institute of Engineering and Technology, Lehra Gaga. There were total 15 Wards in the Municipal Council, Lehra Gaga-respondent No.3. In the first round, out of 8 seats, 5 were declared elected from the independent candidates, including the petitioners. In the second round, out of 7 seats, 3 were declared elected from the independent candidates. The independent candidates, who were declared winners i.e. respondent Nos.7 and 8 were from the Congress party. The petitioners were allotted the symbol of 'Gas Cylinder' and 'Truck' and both the wards i.e. Ward Nos.8 and 2 were reserved for the candidates belonging to Scheduled Caste category. The votes were polled on

14.02.2021. The counting started at 9.00 A.M. on 17.02.2021 at Baba Hira Singh Bhattal Institute of Engineering and Technology, Lehra Gaga. Result of Ward Nos. 1 to 8 was declared at about 10.00 A.M., whereby petitioners were declared elected from Ward Nos.8 and 2 respectively. Petitioner No.1 had obtained 264 votes and was declared elected by a margin of 50 votes against respondent No.7. Petitioner No.2 had obtained 373 votes and was declared elected by a margin of 69 votes as opposed to respondent No.8. Even some of the newspapers had reported that the petitioners were declared as winners from Ward Nos. 8 and 2. One such news cutting is attached as Annexure P-4. When petitioners went to get their winning certificates from respondent No.4, they were shocked to know that they had lost the election and respondent Nos. 7 and 8 had won. Due to the protest on the site, the General Election Observer for the Constituencies of Malerkotla, Amargarh, Dhuri, Bhawanigarh, Sunam, Longowal and Lehra Gaga namely Sh. Sanjay Popli, IAS, arrived and gave a detailed inquiry report (Annexure P-5) to the State Election Commissioner-respondent No.2. As per this report, respondent Nos. 4 to 6 had botched up and rigged the entire counting process. Form-35 pertaining to Ward Nos.8 and 2 have been attached as Annexures P-6 and P-7. A perusal of Form-35 (Annexure P-6) shows that Sehaj Pal Kaur-respondent No.7 got 112 votes. Numeric '1' was made as '6', therefore, the result showed 162 votes. It further shows that petitioner No.1-Surinder Singh got 161 votes and the numeric '6' was changed into '0' and the result showed 101 votes. Chotta Singh, who got 100 votes, was turned to 110 votes, only to maintain the figure of 841 votes polled. Similarly, as per Form-35 (Annexure P-7) regarding Ward No.2, petitioner No.2 got 373 votes, which was changed to 313 as '7' was tampered to make it look like '1'.

Respondent No.8-Pooja Rani got 304 votes in her favour. But, the figure was changed to 364 as '0' was changed into '6'. Statements of losing candidates recorded by the General Election Observer have been placed on record as Annexure P-8. After receiving the report (Annexure P-5), respondent No.2-State Election Commission wrote a letter dated 19.02.2021 (Annexure P-9) to respondent No.1 to immediately suspend respondent No.4, as she had been found guilty.

On 12.03.2021, when notice of motion was issued in this case, convening of the meeting for election to the office of President, Municipal Council, Lehra Gaga, District Sangrur, was kept in abeyance.

Upon notice of this petition, respondents have filed their separate written statements. Thereafter, petitioners filed their rejoinders.

On 17.05.2022, when the case was taken up for hearing, this Court had gone through the report dated 18.02.2021 (Annexure P-5) given by the General Election Observer, whereby it was observed that Smt. Jeevanjot Kaur, PCS, Returning Officer-cum-SDM, Lehra Gaga, Sh. Manjit Singh, ARO-cum-Naib Tehsildar, Lehra Gaga and Sh. Surinder Singh, Tehsildar, were found to be responsible for criminal misconduct and rigged up and botched up handling of the counting process, compilation and criminal alteration of election results of Ward No.2, Lehra Gaga Constituency. The State Election Commission, Punjab, vide letter dated 19.02.2021 (Annexure P-9) had informed the Chief Secretary to Government of Punjab to take appropriate steps against the Returning Officer Smt. Jeevanjot Kaur.

As per reply dated 25.03.2021 filed by respondent No.1, vide order dated 01.03.2021 (Annexure R-1), respondent No.4 was transferred

from Lehra Gaga and was directed to report immediately at the headquarter, where she joined on 03.03.2021. Thereafter, the competent authority, vide order dated 22.03.2021 had directed to issue show cause notice to all the concerned officers, including respondent No.4 for their comments/replies before they were charge-sheeted. It was further stated that with respect to the fate of election of Ward No.2, as per the enquiry report dated 18.02.2021 (Annexure P-5) and letter dated 19.02.2021 (Annexure P-9), a further decision was to be taken by respondent Nos. 1 and 2. On 12.07.2022, learned counsel, on instructions from Surinder Singh, Superintendent, Punjab State Election Commission, informed that recounting would be done under the observation of the Deputy Commissioner, Sangrur, within two weeks. On 18.07.2022, a misc. application i.e. CM-10091-CWP-2022, was filed on behalf of respondent Nos.7 and 8 for preponement of the date of hearing. The case was adjourned to 19.07.2022 for producing the result/record of recounting in the Court in a sealed cover. On 19.07.2022, learned State counsel had produced the result/record of recounting in a sealed cover. After seeing the result, it was re-sealed and taken on record. Learned State counsel was directed to get the relevant file to know, as to whether Surinder Singh, Superintendent, Punjab State Election Commission, had given instructions for recounting to be done under the observation of the Deputy Commissioner, Sangrur. On 20.07.2022, following order was passed by this Court:-

“learned State counsel has produced a file through Surinder Singh, Superintendent, Punjab State Election Commission.

A perusal of the file shows that a meeting was convened on 08.07.2022, under the Chairmanship of Secretary, State Election Commission, Punjab and three other officers. In this meeting, it has been observed that initial poll process has not been vitiated and the

counting process was mismanaged and there was lack of transparency by the Returning Officer. It has been further observed that if, the High Court, so desires, in view of matter of justice, recounting of the election process can be done. A note was prepared on 08.07.2022 and on the basis of this note, submissions were made by learned State counsel on instructions of Surinder Singh, Superintendent, on 12.07.2022. In this backdrop, the Court had adjourned the matter to 04.08.2022, so that re-counting could be conducted under the observations of the Deputy Commissioner.

Learned State counsel has submitted that the result has been produced in the Court yesterday, in a sealed cover. On instructions received from Ms. Navreet Sekhon, RO-cum-SDM, Lehra Gaga, learned State counsel has further submitted that the result has been declared. Learned State counsel further informs that notices were duly served to all the candidates, including respondent Nos. 7 and 8, which was videographed to be present for recounting.

Learned counsel for respondent Nos. 7 and 8 submits that none of their agents was present at the time of re-counting and process was vitiated, for lack of transparency.

The question for consideration is, whether recounting could be done, after the Three Member Committee of the Election Commission, in its meeting dated 08.07.2022, had observed that the counting process was mis-managed and there was lack of transparency by the Returning Officer.

Since the result has already been declared, *status quo* be maintained.”

Learned counsel for the petitioners has argued that during the pendency of this petition on 08.07.2022, a meeting was convened under the Chairmanship of Secretary, State Election Commission, Punjab, in the presence of following officers/officials:-

- (1) Superintendent Election (Member)
- (2) Assistant Controller (F&A)(Member)
- (3) Senior Assistant, Elections (in attendance).

The Committee went through the inquiry report dated 18.02.2021.

was totally mismanaged and there was lack of transparency by the Returning Officer. It was decided that if, the High Court so desires, the representative of the department could submit before the Court that in view of the natural justice and to restore the faith in free and fair democratic election process, the State Election Commission may facilitate recounting of the election process. The observation made by the Committee was that for fair and free election, recounting was necessary as per report dated 18.02.2021 (Annexure P-5). In this meeting, it was nowhere observed that the High Court had given direction for recounting of votes. It was stated that for free and fair elections, it was necessary to do the recounting as per aforesaid inquiry report. Thereafter, the recounting has been done. The process of inquiry was initiated on the same day when the result was declared. Process of recounting has been provided under Rule 82 of the Punjab Municipal Election Rules, 1994. Learned counsel for the petitioners has further argued that counting of votes started at 9.00 A.M. and result was declared at 3.00 P.M. On the same day, a complaint was made, as contemplated under Rule 82 of the above said rules, for recounting of the votes and an inquiry was also initiated by Mr. Sanjay Popli, IAS, General Observer. As per his report, the counting process had been botched up and rigged by respondent No.4. In this backdrop, the inquiry was initiated on the same day. As per Rule 82 (4) of the Punjab Municipal Election Rules, 1994, recounting can be done and after doing the recounting, amendment in the result-sheet in Form-35 can be made. There is no bar that a person cannot approach this Court under Article 226 of the Constitution of India for recounting of votes under Rule 82 (4) of the above rules. Once, recounting is done, Form-35 can be issued as per Rule 83 and result can be

declared under Rule 84. After declaration of the result, the alternative remedy to challenge the election is before the State Election Commission. However, for the purpose of recounting, the High Court under Article 226 of the Constitution of India, has the jurisdiction to interfere, examine and pass appropriate orders.

Mr. Abhimanyu Tiwari, learned counsel for respondent Nos.7 and 8, has vehemently argued that once respondent Nos. 7 and 8 had been declared to be winners, the only alternative remedy available with the petitioners was to file an election petition and under Article 243-ZG, there is bar of judicial interference. He has referred to the judgments passed by Hon'ble the Supreme Court in **N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency**, 1952 SCR 218 and **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others**, 1978 AIR (SC) 851. Further reliance has been placed on **Manda Jaganath vs. K.S. Rathnam and others**, 2004 (2) RCR (Civil) 810, wherein, Hon'ble the Supreme Court held that extraordinary jurisdiction of the High Courts under Article 226 of the Constitution of India is pushed out, where the dispute takes the form of calling in question an election, except in special situation pointed out, but left unexplored in **Ponnuswami's** case. He has further referred another judgment passed by Hon'ble the Supreme Court in **State of Goa and another vs. Fouziya Imtiaz Shaikh and another**, 2021 SCC OnLine SC 211 on the proposition that from the date of notification of the election till the date of the declaration of result, a judicial hands-off is mandated by the non obstante clause contained in Article 243-ZG, which debars writ court under Articles 226 and 227 of the Constitution of India from interfering once the election process has begun until it is over. He has

further referred to the Full Bench judgment of this Court in **Prithvi Raj vs. State Election Commission, Punjab and others**, 2007 (3) RCR (Civil) 817, whereby provisions of Article 243-ZG of Constitution of India and Section 74 of Punjab State Election Commission Act, 1994 were examined. In that case, the petitioner had filed nomination papers and the State Election Commission had deleted his name from the array of contesting candidates on the ground that his name stood deleted from the electoral rolls. It was held that the petitioner had remedy to file election petition before the Election Tribunal. Though the writ was maintainable, but the High Court was restrained from exercising its judicial restraint.

Learned counsel for respondent No.3-MC, Lehra Gaga, is not disputing the fact that the petitioners have contested the election from Ward Nos. 8 and 2 with symbols of 'Gas Cylinder' and 'Truck' respectively from reserved seats. The votes were polled on 14.02.2021 and counting was started at 09.00 A.M. on 17.02.2021 at Baba Hira Singh Bhattal Institute of Engineering & Technology, Lehra Gaga. Result of Ward Nos.1 to 8 were declared at about 10.00 A.M. on the same date and respondent Nos. 7 and 8 were declared as winners of Ward Nos. 8 and 2 respectively by the Returning Officer (respondent No.4). A complaint was made by Varinder Kumar Goyal, resident of Lehra Gaga to the Punjab State Election Commission, to the effect that the SDM-cum-Returning Officer, Smt. Jiwanjot Kaur, PCS, had manipulated in declaring result of Ward Nos. 2 and 8. Pursuant to the said complaint, the Punjab State Election Commission ordered the General Election Observer namely Sh. Sanjay Popli, IAS, to enquire into the said issue. In this backdrop, the report dated 18.02.2021 (Annexure P-5) has been given.

Mr. Navdeep Chhabra, Senior DAG, Punjab, has argued that after getting report dated 19.02.2021 (Annexure P-9) from the Punjab State Election Commission, the matter had been forwarded to the Commissioner, Patiala Division, Patiala and thereafter, vide order dated 01.03.2021 (Annexure R-1), respondent No.4 was transferred from Lehra Gaga and was directed to report the headquarter immediately, where she joined on 03.03.2021.

Along with his reply, respondent No.5-Surinder Singh, Tehsildar, Lehra Gaga, has placed on record copy of office order dated 15.02.2021 (Annexure R-5/1), as per which, he was assigned the duty to send the Electronic Voting Machines (EVM), round wise from strong room, situated on the ground floor to the Counting Supervisors on their counting tables located in multipurpose hall on the second floor of Baba Hira Singh Bhattal Institute of Engineering and Technology. As per his reply, when the counting had started at 9.00 A.M., he opened the sealed lock of Strong Room in the presence of the petitioners as well as other contesting parties. The EVMs were sent to the Counting Supervisors at their counting tables in intact position under his supervision and under the observation of the police authorities, which were available on each and every floor. It is further stated that respondent No.5 had no authority regarding filling up of statutory Form-35 during the election process and had no concern with the counting as well as declaration of result. It is only, respondent Nos. 4 and 6, being RO and ARO, who are responsible for the same.

The stand taken by respondent No.4 in her written statement is that the alternative remedy available with the petitioners is to file an election petition under Section 79 and 87 of the Punjab State Election

Commission Act,1994. Under Article 243-ZG of the Constitution of India, there was bar to file a writ petition challenging the election.

After hearing learned counsel for the parties, short questions for consideration are; (i) whether a candidate has a right to file a writ petition under Article 226 of the Constitution of India to get the recounting done under Rule 82 of the Punjab Municipal Election Rules, 1994 and (ii) whether the jurisdiction of the High Court is barred and only remedy available with the candidate is to file an election petition before the Election Tribunal.

In the present case, the parties are not disputing the inquiry report dated 18.02.2021 (Annexure P-5) conducted by Sh. Sanjay Popli, IAS, General Election Observer. Counting of votes started at 09.00 A.M. on 17.02.2021 and initially, the petitioners were declared as elected from Ward Nos. 8 and 2. However, they were not given the certificates as per Rule 85 of the Punjab Municipal Election Rules, 1994. A complaint was made on the same day i.e. 17.02.2021 itself with respect to the botching up and misconduct in the entire process of counting of votes by respondent No.4. On account of this complaint, Mr. Sanjay Popli, IAS, General Election Observer, gave a detailed inquiry report (Annexure P-5), a perusal of which shows that statements of the counting officers and losing candidates were recorded and the entire election process had been sabotaged by respondent No.4. Respondent Nos. 4 to 6 were directly responsible for botching up and mishandling the counting process. The petitioners, in the present petition, have also placed on record Form-35 pertaining to Ward Nos.8 and 2 as Annexures P-6 and P-7. As per Form-35 (Annexure P-6), Sehaj Pal Kaur-respondent No.7 got 112 votes. Numeric '1' was made as '6', therefore, the result showed 162 votes. It further shows that petitioner No.1-Surinder

Singh got 161 votes and the numeric '6' was changed into '0' and the result showed 101 votes. Chotta Singh, who got 100 votes, was turned to 110 votes, only to maintain the figure of 841 votes polled. Similarly, as per Form-35 (Annexure P-7) regarding Ward No.2, petitioner No.2 got 373 votes, which was changed to 313 as '7' was tampered to make it look like '1'. Respondent No.8-Pooja Rani got 304 votes in her favour. But, the figure was changed to 364 as '0' was changed into '6'. Form-35 (Annexures P-6 and P-7) were made basis for declaring the winners. Inquiry report dated 18.02.2021 (Annexure P-5) is not to be doubted and on the basis of this report, respondent No.2-State Election Commission wrote a letter dated 19.02.2021 (Annexure P-9) to respondent No.1 to immediately suspend respondent No.4.

Petitioners have also placed on record the judgment dated 28.04.2021 passed by Co-ordinate Bench of this Court in **Basant Kumar Goyal and another vs. State of Punjab and others**, CWP No.9156 of 2021 (Annexure P-10). In that case, direction was sought to be issued to the State Election Commission, Chandigarh, to declare the result of respondent Nos.7 and 8 (therein) for election of Municipal Council, Lehra Gaga, as null and void, as they had encroached upon the Government land. Further prayer had been made not to hold election for electing the President of Municipal Council, Lehra Gaga, District Sangrur. While dismissing the said petition, it was observed that the cause of action in CWP No.5876 of 2021 (present petition) was different, as the inquiry report had already been given by the General Election Observer regarding malpractice and as such, the petitioners cannot be allowed to take the advantage of that order. Hence, this Court has already dismissed a writ petition qua the same election, where

prayer was made to declare the election as null and void, as there was some encroachment on the Government land.

However, in the present case, as per inquiry report dated 18.02.2021 (Annexure P-5) and letter dated 19.02.2021 (Annexure P-9), respondent No.4 has already been suspended and recounting has been done as per Rule 82 (4) of the Punjab Municipal Election Rules, 1994. Argument raised by learned counsel for the petitioners that the recounting has been done during the pendency of this petition on the presumption that this Court has given such direction, is also liable to be rejected, as this Court has never given direction for recounting of votes in this case. When the file was produced before this Court by Surinder Singh, Superintendent, it was stated that a meeting was convened on 08.07.2022, under the Chairmanship of Secretary, State Election Commission, Punjab and three other officers. They had perused the inquiry report dated 18.02.2021 given by the General Election Observer and observed that the poll process had not been vitiated and it was the counting process, which was mismanaged and there was lack of transparency by the Returning Officer. Once, the committee had observed the above said fact with respect to the inquiry report dated 18.02.2021 (Annexure P-5), the recounting has been rightly done as per Rule 82 (4) of the Punjab Municipal Election Rules, 1994. After recounting, the result has been declared under Rule 84 of the said Rules.

Judgments referred to by learned counsel for respondent Nos. 7 and 8 will not be applicable to the facts of the present case, as the present case is governed by Rule 82 of the Punjab Municipal Election Rules, 1994. Prayer for recounting of votes could be entertained before declaration of the final result and this would not amount to interference in the election

process. Hon'ble the Supreme Court in Jagdish Bulchandbhai Mohnani vs. Tamanna H. Jhalodia Or her Successor in Office & Ors., SLP (C) No. 8045 of 2021 (decided on 26.04.2022), while dealing with the case of recounting of votes, has observed that appropriate course of action to quell all doubts in the election process would be to have a recount of the votes under the supervision of the State Election Commissioner of the State of Gujarat, where representatives of both the candidates should be present and if, respondent No.4 (in that case) once again emerges as the person with the highest votes, no remedial action would be required. But, in case the petition is held to have more votes, the rectification certificate will be issued.

In the present case, once, the result has been declared and final sheet, in the form of Form-35, has been issued, the only remedy available with the petitioners is to approach the State Election Commission/Tribunal. It is not the case here that any direction for recounting of the votes has been given by this Court. The recounting has been done by the authorities after following due procedure pursuant to the inquiry report dated 18.02.2021 (Annexure P-5), under Rule 82 of the Punjab Municipal Election Rules, 1994, which they could have done.

In view of the above discussion, no interference, as prayed for, is required by this Court. Resultantly, the present petition is dismissed.

(RITU BAHRI)
JUDGE

(NIDHI GUPTA)
JUDGE

27.09.2022
ajp

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