

121

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

**CR-2970-2022 (O&M)
Reserved on : 31.08.2022
Date of decision : 07.09.2022**

Sadhu Singh

....Petitioner

Versus

Sub Divisional Magistrate-cum-Presiding Officer & Ors.Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jhanji, Senior Advocate with
Ms. Nikita Garg, Advocate for the petitioner.

Ms. Jasleen Kaur Sidhu, DAG Punjab for respondent No.1.

Respondent No.2 – Sh. Ajay Singla, Returning Officer present
in person.

Mr. A.P.S. Rana, Advocate for respondent No.3.

Mr. A.P. Kaushal and Mr. K.S. Dadwal, Advocates
for respondent No.5.

ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 20.07.2022 (Annexure P-5) passed by respondent No.1, whereby the election petition filed by respondent No.5 has been allowed and a Committee has been constituted for recounting the votes.

The brief facts relevant to the present *lis* are that in December 2018 the petitioner as well as respondent Nos.4 and 5 filed their nominations for the post of Sarpanch for Gram Panchayat Singpura, Tehsil Kharar,

District SAS Nagar. The polling was held on 30.12.2018 and the petitioner was declared elected. In January 2019 the respondent No.5 filed an election petition (Annexure P-1) before respondent No.1 challenging the election of the petitioner as Sarpanch of Gram Panchayat Singpura. Vide impugned order dated 20.07.2022 respondent No.1 accepted the election petition filed by respondent No.5 and constituted a Committee for recounting the votes. Hence, the present revision petition.

In view of the submissions made by the learned counsel, the records were summoned on 28.07.2022 after hearing both the counsel for the parties. Before this Court arguments have been made by counsel representing the petitioner, respondent Nos.1, 3 and 5 while respondent No.2 put in appearance in person. None of the respondents filed any counter-affidavits.

Learned counsel for the petitioner has contended that respondent No.1 has allowed the election petition in a routine and cavalier manner and has not assigned any reasons for ordering a recount. According to learned counsel the impugned order is a mere reproduction of the statements of the parties recorded in evidence and there are no reasons forthcoming for ordering a recount which has been ordered mechanically. It is contended that the impugned order does not even record a prima facie case for ordering a recount. Reliance has been placed upon the decisions in the cases of **Kirpal Singh vs. Preet Mohinder Singh [1999 (4) RCR (Civil) 248]**, **Udey Chand vs. Surat Singh & Anr. [2009 (10) SCC 170]**, **Harjinder Singh vs. Addl. Commissioner-cum-Election Tribunal & Ors. [2015 (47) RCR (Civil) 749]** and **Gurnam Bindra Singh vs. State of Punjab & Ors. [2008 (4) RCR (Civil) 741]**.

Per contra, learned counsel for respondent No.5 submitted that after the counting the respondent No.5 was declared elected by 12 votes but immediately it was announced that 19 votes had been rejected and the petitioner was declared elected as Sarpanch by a margin of 13 votes. According to counsel the 19 votes were rejected without assigning any reasons which caused grave prejudice to respondent No.5 and is also violative of Rule 33 of the Punjab Panchayat Election Rules, 1994. He also contended that once a recount has been ordered then the result of the recount has to be given effect to. Reliance has been placed upon the decisions in the cases of **Darshan Singh vs. Deputy Commissioner-cum-President Officer & Ors.** [2000 (3) RCR (Civil) 271], **T.A. Ahammed Kabeer vs. A.A. Azeez & Ors.** [2003 (4) RCR (Civil) 250] and **Chandeshwar Saw vs. Brij Bhushan Prasad & Ors.** [2020 (12) SCC 70], **Baldev Singh vs, Shinder Pal Singh & Anr.** [2007 (1) SCC 341] and **Sadhu Singh vs. Darshan Singh & Anr.** [2006 (6) SCC 255].

Heard learned counsel for the parties and respondent No.2 appearing in person.

Vide the election petition (Annexure P-1) the election of the petitioner as Sarpanch was challenged by respondent No.5 on the following allegations :

“7. That at the time of counting, the petitioner and his agent were directed to sit 5-6 feet away from the counting table. After counting, the petitioner was declared elected by 12 votes. Then abruptly the polling party stated that 19 votes have been rejected and that Sadhu Singh is elected as Sarpanch by margin of 13

votes. The polling party without giving any reason improperly rejected 19 number of votes polled in favour of the petitioner in connivance with respondent no.3 so that respondent no.3 is elected as Sarpanch. This has caused prejudice to the petitioner. The petitioner protested but his protests went unheeded. The petitioner and his polling agents were not granted any opportunity to inspect the 19 number of votes which are shown to have been rejected in order to ascertain the marks on the ballot papers. The petitioner urged the counting party headed by the Presiding Officer to recount the votes. The presiding officer got the signatures of the petitioner on the blank papers for the purpose of recounting but without recounting the votes, the result was declared.

8. That wrong procedure was adopted by the counting party headed by presiding officer in the counting of votes and despite the request of the petitioner the votes polled were not counted separately. The votes polled were intermingled and not counted in separate packets. The counting party intermingled 24-25 votes polled in favour of respondent no.4 with the votes of respondent no.3 and counted them in favour of the winning candidate. The petitioner and respondent no.4/Ravinder Singh and their polling agents raised hue and cry that votes polled in favour of the contesting candidate should

not be intermingled and be counted in separate packets. But the polling party paid no heed to consider their genuine request. If proper counting was done as per rules, the petitioner would have won. Moreover the ballot box and other election material was not got sealed in the presence of the petitioner. The election rules and legal provisions were violated. The petitioner has brought the abovesaid irregularities in the notice of the higher authorities but all in vain.

9. That the counting party has committed grave illegality and irregularity in counting of votes for the post of Sarpanch. The said grave illegality and irregularity in counting the votes/rejection of the votes has materially affected the result of election/ returned candidates and have gravely prejudiced the petitioner.”

Respondent No.3 in his election petition also averred that *“There has been non-compliance of the provisions of law including Section 66 of the Punjab State Election Commission Act, 1994 and Rule 33 of the Punjab Panchayat Rules, 1994 and the rules and procedure regarding the counting/rejection of votes, which has polluted the election process and as such the election of respondent no.3 to the said post is void and liable to be set aside”.*

The petitioner filed his reply (Annexure P-2) to the election petition and contested the same. The Returning Officer also filed a written statement (Annexure P-3) denying the grounds of challenge raised in the election petition. As per the averments made in this petition, the evidence of

the petitioner and of respondent Nos.4 and 5 was recorded during the proceedings before respondent No.1. Vide impugned order dated 20.07.2022 respondent No.1 accepted the election petition filed by respondent No.5 and constituted a Committee for recounting the votes.

A perusal of the impugned order reveals that respondent No.1 has extensively reproduced the statements recorded in evidence of the parties to the *lis*. However, there is no consideration of the merits or demerits of these statements by respondent No.1. The impugned order does not even mention the grounds of challenge to the election of the petitioner as Sarpanch. The very brief facts are mentioned in the opening paragraph of the impugned order, followed by the statements of Ravinder Singh (present respondent No.4), Sadhu Singh (present petitioner) and Kamaljit Singh (present respondent No.5). Thereafter respondent No.1 proceeded to order the recount by holding as under :

“After perusing the documents on record and after hearing both the parties. After perusing the above mentioned facts the petition filed by the petitioner is accepted. For recounting of votes/ballot papers casted in the Village Singpura for the post of Sarpanch the committee of the following officials has been constituted:

- 1) Sh. Puneet Bansal, Naib Tehsildar, Gharaun*
- 2) Executive Officer, Municipal Council Kharar*

The above committee under their supervision and in the presence of both the parties will conduct recounting of votes in the Court of undersigned and

Block Development and Panchayat Officer, Kharar will assist the above committee but the date of recounting will be declared later.”

The impugned order does not show any application of mind by respondent No.1 to the pleading of the parties and the evidence on the record. This Court is left guessing as to what were the reasons which weighed with respondent No.1 to order a recount. The grounds of challenge to the election as raised in the election petition filed by respondent No.5 have not even been noticed in the impugned order. No prima facie grounds have been recorded by respondent No.1 to order a recount of votes.

In the case of Kirpal Singh (*supra*) it was inter-alia held as under :

“11.I have considered the rival submissions of the parties and I am of the considered opinion that the impugned order, Annexure P-1, is liable to be disturbed as in the opinion of this court, the learned Tribunal had exceeded its jurisdiction in such a manner that it has disturbed the confidence of the voter and it has violated the sanctity of secrecy of votes. Recounting of votes shall not be granted as a matter of course. A very strong ground should be made out by the person who seeks recounting of votes because recounting of the votes at the whims of a person will definitely disturb the secrecy of the ballot. We are in a democratic country. A voter expresses his faith or consent or his opinion through ballot papers either in favour of a particular candidate

or in favour of a particular party. His confidence should not be disturbed so lightly that it may provide a handle to everybody for claiming recounting.”

In Udey Chand’s case (*supra*) the Supreme Court held that :

“12. The importance of maintenance of secrecy of ballot papers and the circumstances under which that secrecy can be breached, has been considered by this Court in several cases. It would be trite to state that before an Election Tribunal can permit scrutiny of ballot papers and order re-count, two basic requirements viz.:

- (i) the election petition seeking re-count of the ballot papers must contain an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded, and*
- (ii) on the basis of evidence adduced in support of the allegations, the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary, are satisfied.*

xxx

26. We have no hesitation in holding that a petition for re-count as contemplated under clause (b) of Section 176(4) of the Act must contain adequate statement of material facts on which the election petitioner relies in support of his allegation(s) and it must also be supported by some contemporaneous evidence to show

irregularity or illegality in the counting. On this basic material, which affords the basis for the allegations in the petition and the response of the opposite party thereon, the Tribunal is required to record its prima facie satisfaction that in order to decide the issue raised in the petition and in order to do complete justice between the parties the “scrutiny and computation of the votes” recorded in favour of each candidate is necessary. The need to record reasons in support of the satisfaction can hardly be overemphasised because reasons are the soul of the order/judgment. Therefore, we hold that though in an election petition seeking an order under Section 176(4)(b) of the Act, it may not be necessary for the court to hold a regular enquiry as postulated under clause (a) of Section 176(4) of the Act but the court is obliged to apply its mind to the material facts, disclosed in the petition, on which the allegations of irregularity or illegality are founded, along with some contemporaneous evidence, which would depend on the facts and circumstances of each case. An order for recount on the basis of bare allegations in the election petition would not be a proper exercise of jurisdiction under the provision.”

In Harjinder Singh’s case (*supra*) the recount of votes was ordered without assigning any reasons. This Court held :

“5. The order read thus :

“File was presented. Case was called. Counsel for both the parties are present. For recounting the votes of Village Barwala, Tehsil Patti, District Tarn Taran, a Three members committee comprising of (1) Asstt. Commissioner (Z), Tarn Tarn; (2) Tehsildar (Elections), Tarn Taran and (3) Superintendent (Revenue) o/o Deputy Commissioner is constituted. Presiding Officer, Returning Officer Village Barwala advised to appear in this Court on 8.7.2015 at 10.00 a.m. along with the concerned record of the election of Sarpanch. The Block Development and Panchayat, Patti is given duty that he should come present in this Court on 8.7.2015 along with the record of polling of Village Barwala, Distt. Patti, District Tarn Taran, which is deposited in their office along with the Returning Officer and Presenting Officer. File be presented again on 8.7.2015 for recounting.”

6. *On going through the order, I am of the view that order do not assign any reasons for recounting of the votes. There has to be application of mind. Thus, in my view order is not sustainable and hereby set aside. The matter is remitted back to the Election Tribunal to decide the election petition in accordance with law as expeditiously as possible preferably within a period of*

four months from the date of receipt of certified copy of the order.”

In the case of Gurnam Bindra Singh (*supra*) this Court held that :

“28. Be that as it may, the impugned order cannot be sustained as respondent No.4 had failed to prima facie establish the case for recount as allegations were too general in nature required to be proved by evidence. Nothing has been placed on record as to whether any written complaint was made by respondent No.4 before the Polling Officer immediately after the election. Even after filing of the Election Petition different dates were given and only when there was change of officer holding the post, decision was taken to order the recount. The reading of the order shows that much reliance has been placed on averments made in Para 6 of the petition which has been reproduced above.

29. As already observed, the allegations lack the material particulars. It was incumbent upon the Election Tribunal to first prima facie satisfy itself on the material produced regarding truth of the allegations made for recount. The learned Tribunal even did not think it proper to summon the Polling Officer or other officials against whom serious allegations were made.”

Thus, it is well settled that before ordering a recount the Tribunal has to prima facie be satisfied that a case was made out for ordering a recount. This satisfaction has to be discernible from the order passed

ordering a recount. A recount of votes cannot be ordered mechanically without advertent to the allegations in the election petition and being satisfied that these allegations prima facie made out a case for ordering a recount. A recount cannot be ordered on the mere asking. The impugned order in the present case does not record any satisfaction by respondent No.1 about there being a prima facie case made out for ordering a recount of votes.

The judicial precedents cited by counsel for respondent No.5 are distinguishable and not applicable to the facts and circumstances of the present case. In Darshan Singh's case (*supra*) this Court while upholding the order of recount of votes found that "*In view of the pleadings and the documentary and oral evidence produced by the election petitioner-respondent herein, a definite case has been made out casting a shadow on the entire process of counting of votes*". It was further held that "*On the application of the above settled principle of law, pleadings and evidence on record, I have no hesitation in holding that the learned Tribunal had sufficient material before it to pass the order of re-count*". In the present case the impugned order does not disclose any reason which weighed with respondent No.1 to order a recount of votes.

In the case of T.A. Ahammed Kabeer (*supra*) it was held that once a re-count has been allowed the Court cannot shut its eyes on the result of re-count on the ground that the result of re-count as found is at variance with the pleadings. However, it was also held that the Court would permit a re-count only upon a clear case in that regard having been made out. No such clear case is made out in the impugned order in the present case.

In Chandeshwar Saw's case (*supra*) the Supreme Court found that the material facts justified the recount of votes. It was inter-alia held that:

“15. The question is: whether material facts to justify an order of re-count of votes has been clearly pleaded and the same have been proved by the appellant-election petitioner in the present case? That issue has been analysed by the Election Tribunal extensively, as is evident from the analysis made by it, which commended to the learned Single Judge. Since the appellant had substantiated the allegation made in the election petition and the Election Tribunal being convinced about the said claim proceeded to issue order of re-count. No fault can be found with that approach of the Election Tribunal nor it is possible to suggest that the Election Tribunal or the learned Single Judge was not conscious about the necessity to substantiate the allegation about the serious irregularities committed by the officials during the counting.”

Thus, this decision does not help respondent No.5 as in the present case there is no satisfaction recorded by respondent No.1 for ordering a recount of votes.

In Baldev Singh's case (*supra*) the recount was set aside by the Supreme Court so this decision is of no assistance to respondent No.5.

In Sadhu Singh's case (*supra*) the Supreme Court upheld the order of recount while finding and being satisfied *“that the conditions*

precedent necessary for a direction of re-counting of votes stand satisfied”.

The conditions necessary for order a recount of votes, as noticed by the Supreme Court, are (i) prima facie case must be established; (ii) material facts must be pleaded stating irregularities in counting of votes; (iii) a roving and fishing inquiry shall not be directed by way of an order for re-counting of votes; (iv) an objection to the said effect should be raised; and (v) secrecy of ballot papers should be maintained. In the present case the impugned order does not disclose the consideration by respondent No.1 of these conditions precedent before ordering a recount.

In view of the discussion above, this Court finds that respondent No.1 passed the impugned order of recount of votes without following the settled principles of law in this regard. The impugned order is cryptic, vague and non-speaking and does not even record a prima facie satisfaction of respondent No.1 to order a recount. No grounds or reasons are forthcoming in the impugned order which would justify the order of a recount of votes.

The present revision petition is thus allowed, the impugned order (Annexure P-5) is set aside and the matter is remanded to respondent No.1 to pass a fresh order, in accordance with law. Parties to appear before respondent No.1 on 26.09.2022.

Nothing mentioned in this order shall have any bearing on the merits of the election petition.

(ALKA SARIN)
JUDGE

07.09.2022
Yogesh Sharma

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO