

119

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-1213-2023****Date of Decision: April 19, 2023****Gaurav**

..... Petitioner

Versus**State of Haryana and others**

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE****Present:** Mr. Akash Sheoran, Advocate for
Mr. Sarfraj Hussain, Advocate for the petitioner.

LISA GILL, J.

1. Petitioner in this writ petition seeks direction for recount of votes polled for the post of members of Zila Parishad, District Palwal in the elections held on 22.11.2022.

2. Petitioner is the unsuccessful candidate having lost the election to respondent No. 7. It is pleaded that polling for the post in question at Ward No. 19 was carried out on 22.11.2022 and counting of votes was carried out on 27.11.2022. Process of counting was statedly in progress simultaneously in two blocks but petitioner was not informed as to where counting for Ward No. 19 is to be conducted. Petitioner and his agents were allegedly called at Palwal Block but after remaining present there for about twenty minutes, petitioner was informed that counting for Ward No. 19 was being carried out at Badoli Block. Petitioner rushed to Badoli Block, though

his agents could not reach there. It is pleaded that petitioner came to know that counting of first phase of Ward No. 19 was already complete in his absence and that of his agents. Petitioner is stated to have asked the officers to stop the process of counting and to re-count the votes already counted. However, no attention was paid to the petitioner and counting of votes was stated to have been carried out in a hurried manner. Result of the election was declared on 27.11.2022 wherein respondent No. 7 was declared elected. Petitioner is stated to have submitted representation dated 14.12.2022 before the Returning Officer-cum-Deputy Commissioner, Palwal raising suspicion that counting was not done honestly and some illegalities have been committed in the process though no detail thereof is coming forth.

3. Learned counsel for the petitioner submits that there has been bungling in the counting, which was not carried out in the presence of the petitioner or his agents, therefore, recount should be directed in this matter.

4. We have heard learned counsel for the petitioner and have gone through the petition with his assistance. Petitioner seeks interference by this Court for directing re-count of the votes polled in the election in question in which he was unsuccessful with respondent No. 7 being declared elected, on the ground that he entertains a suspicion that counting of votes was not proper and is riddled with illegalities. However, we find no ground whatsoever for interference in this matter in exercise of jurisdiction under Article 226 of the Constitution of India. This so for reasons as discussed in the following paras.

5. At the outset, it is relevant to note that there is a clear cut bar to interference by Courts in electoral matters as provided in Article 243-O of the Constitution of India. Section 170 of 1994 Act also provides a

bar for interference in election matters. In a long line of cases, the Hon'ble Supreme has consistently held that though jurisdiction of the High Court under Article 226 of the Constitution of India is not ousted in matters related to elections, it is a rule of prudence whereby the High Court while exercising self-restraint would not interfere in the matter, especially if the petition presented before it 'calls in question an Election'. Anything done towards completion or furtherance of the election proceedings, it has been held, cannot be described as questioning the election and these are the situations wherein interference of the High Court may be called for. In the present case, petitioner is clearly calling in question the election at hand. Gainful reference in this regard can be made to judgments of the Hon'ble Supreme Court in **N.M. Ponnuswami Vs. Returning Officer, Namakkal Constituency and others, 1952 AIR 64, Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi, 1978 (1) SCC 405; Election Commission of India through Secretary Vs. Ashok Kumar and others, 2000 AIR (Supreme Court) 2979 and Laxmibai Vs. Collector, Nanded and others, 2020 AIR (Supreme Court) 3393.**

6. The Hon'ble Supreme Court in case of **Ashok Kumar** (supra), while referring to its earlier judgments held as under:-

“28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of over-

enthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

29 xxx xxx xxx

30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution. The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill's case (supra). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the Courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided - one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

31. The founding fathers of the Constitution have consciously employed use of the words 'no election shall be called in question' in the body of Article 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court 'calls in question an election' the bar of Article 329(b) is attracted. Else it is not."

7. In case of **Laxmibai** (supra) the position in this regard was yet again reiterated while holding that "Once alternate machinery is provided by the statute, the recourse to writ jurisdiction is not an appropriate remedy. It is

a prudent discretion to be exercised by the High Court not to interfere in the election matters, especially after declaration of the result of the elections, but relegate parties to the remedy contemplated by the statute.”

8. Larger Bench of this High Court in the case of **Prithvi Raj versus State Election Commission, Punjab 2007 (3) RCR(Civil) 817**, held as under:

“ The words and expressions that appear in Article 243 ZG(b) of the Constitution must be strictly construed and any interpretation beyond the simple grammatical connotations of the words and expressions appearing therein would be impermissible. The word “election..... and the expression..... “called into question.....”, used in Article 243ZG(b) of the Constitution, clearly postulate that where an election can be called into question by way of an election petition, presented before such authority and in such manner as is provided for by a statute enacted by the Legislature of a State, challenge to such election i.e calling in question the election, would have to be made by way of an election petition, filed before an Election Tribunal. In such a situation, the High Court, in the exercise of its discretion, under Article 226 of the Constitution of India would relegate the petitioner to his remedy of filing an election petition.”

9. It was specifically held in the case of **Prithvi Raj** (supra) that the High Court in exercise of judicial restraint would postpone judicial review to a stage after the Election Tribunal adjudicates the Election Petition except to the limited extent as culled out in the number of judgments of the Hon’ble Supreme Court i.e. the case where an appropriate writ, order or direction is required to further the cause of a election because such a petition would not call into question an election.

10. In our considered opinion, learned counsel for the petitioner is unable to point out any ground whatsoever which calls for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India for ordering re-count of votes, which in any case would be a matter of evidence before the appropriate Forum.

11. No other argument has been addressed.

12. Keeping in view the facts and circumstances as above, this writ petition is dismissed with no order as to costs. Needless to say there is no expression of opinion on the merits of the controversy sought to be raised.

(LISA GILL)
JUDGE

April 19, 2023
Rts

(RITU TAGORE)
JUDGE

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