

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-25694-2022 (O/M)

Reserved on : 06.02.2024

Date of decision : 05.03.2024

Kuldeep Singh

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE SUDHIR SINGH  
HON'BLE MR. JUSTICE HARSH BUNGERPresent :- Mr. Vikram Singh and Mr. Ishnoor Singh Bains, Advocates  
for the petitioner.Mr. Manish Dadwal, AAG Haryana assisted by  
Mr. Vivek Kumar, BDPO Israna, Panipat.Mr. Ashish Kapoor, Advocate  
for respondent No. 4.Mr. Ravinder Malik, Advocate  
for respondent No. 5.

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HARSH BUNGER, J.

1. Petitioner (Kuldeep Singh) has filed the instant writ petition under Article 226 of Constitution of India seeking issuance of a writ of certiorari for setting aside the Election Certificate Form No. 21-B dated 02.11.2022 (Annexure P-3), issued to respondent No. 5 (Mohit Kumar) by respondent No. 4-Returning Officer (Panchayat), Gram Panchayat Buana Lakhu, Block Israna, Panipat, subsequently after having declared the petitioner to be the elected Sarpanch of Gram Panchayat Buana Lakhu and after issuance of Form No. 19 and Form No. 21-B to the petitioner.

Further prayer has been made by the petitioner for issuance of a writ of mandamus directing the official respondents to issue Notification declaring the petitioner to be elected Sarpanch in compliance of Form No. 19 and Form No. 21-B, dated 02.11.2022 (Annexure P-2), issued to the petitioner, vide which he was elected as Sarpanch of Gram Panchayat Buana Lakhu, prior to issuance of Form No. 21-B (Annexure P-3) to respondent No. 5.

2. Briefly, the petitioner (Kuldeep Singh), respondent No. 5 (Mohit Kumar) and other candidates contested the elections of Sarpanch of Gram Panchayat Buana Lakhu, Block Israna, District Panipat (Haryana), which was held in the first phase of panchayat elections in the State of Haryana on 02.11.2022.

3. The polling for aforesaid election of Sarpanch was done in six booths bearing No. 65, 66, 67, 68, 69 and 70 and was concluded on 02.11.2022 as per the election schedule and the counting was conducted on the same day i.e. 02.11.2022 itself. It is the case of the petitioner that he secured 1117 votes out of 3767 votes and was declared as the winning candidate. The petitioner claims that the Returning Officer issued Form No. 19 as per the provisions of Rule 70 (1)(a) of the Haryana Panchayati Raj Election Rules, 1994 to the petitioner as he secured the highest number of votes. The said Form No. 19 issued in favour of the petitioner is stated to be duly signed/endorsed by the Returning/Presiding Officers of all the booths, as per rules. The petitioner further claims that being the winning candidate for the post of Sarpanch of Gram Panchayat Buana Lakhu, the

petitioner was issued Form No. 21-B by the Returning Officer, after having been successfully declared as an elected Sarpanch.

4. After the declaration of the result of the election of Sarpanch, Gram Panchayat Buana Lakhu, the petitioner claims that he returned to his house, however, on the same night, the petitioner was called to Panipat by the Returning Officer stating that there was going to be re-counting of votes, whereupon the petitioner was stated to have reached S.D. School, where the Returning Officer informed him that he had lost the election and respondent No. 5 had been declared as the winning candidate and Form No. 21-B (Annexure P-3) was issued to respondent No. 5 on 02.11.2022. The petitioner claims that thereafter he submitted a representation to the Chief Electoral Officer, Haryana State Election Commission, however, no action was taken thereon. Accordingly, the present writ petition has been filed before this Court.

5. In this petition, notice of motion was issued by this Court on 11.11.2022 and it was further ordered that in the meantime, respondents are directed not to issue any Notification with regard to village Buana Lakhu.

6. In pursuance to the notice of motion issued by this Court, initially a short reply by way of affidavit of Poonam Chanda, Block Development Panchayat Officer, Israna, was filed on behalf of respondents No. 1 to 3, wherein the following stand was taken in paras 5 and 6 thereof :-

*“5. That the deponent submits that there were six polling booths established in the Gram Panchayat Buana Lakhu bearing serial number 65 to 70 and as per the procedure/law the Presiding Officer appointed at booth No. 66 to 70 had to complete the counting of votes of their*

*respective polling booths and had to submit the same to the Presiding Officer-cum-Returning Officer appointed at booth No. 65. Accordingly, the same was also submitted by the Presiding Officer appointed at booth No. 69. The Presiding Officer-cum-Returning Officer appointed at booth No. 65 compiled the votes of the candidates and declared the result and the certificate Annexure P-2 and Annexure P-3 were issued by the Presiding Officer-cum-Returning Officer of Polling Booth No. 65 to the petitioner. Thereafter, while videography done was viewed and the result sheet was re-examined. Eventually, it came to the notice that series of the names and votes of the candidates are prepared wrongly by the Presiding Officer appointed at Booth No. 69. Being clerical mistake conducted at booth No. 69, the result sheet was re-prepared and on the basis of the same the respondent No. 5 was declared as winning/successful candidate for the post of Sarpanch Gram Panchayat Buana Lakhu. Hence, there is no as such action has been taken which may be termed as biased, arbitrary, illegal or un-fair. Only clerical mistake conducted at booth No. 69 was removed. It is settled principle (typed as principal) of law that any clerical mistake can be rectified at any stage. Thus, the petitioner has no locus standi to file the present petition on this ground before this Hon'ble High Court.*

*6. That the deponent submits that on the basis of the complaint submitted by the petitioner and report submitted by the Returning Officer, Panchayat Samiti Israna-cum-Managing Director, Sugar Mills Panipat vide letter No. 2578 dated 04.11.2022 and subsequent recommendation submitted by him vide letter dated 07.11.2022, the respondent No. 3 i.e. Deputy Commissioner-cum-District Election Officer*

*(Panchayats), Panipat has assigned an enquiry in the present matter and Chief Executive Officer, Zila Parishad, Panipat has already been appointed as Enquiry Officer vide letter No. 1898/Panchayat dated 14.11.2022. Now, enquiry is pending with Chief Executive Officer, Zila Parishad, Panipat in the present matter. Further action will be taken as per the outcome of the enquiry.”*

7. Separate written statement dated 10.04.2023, on behalf of respondent No. 4-Returning Officer (Panchayat), Gram Panchayat Buana Lakhu, Block Israna District Panipat has been filed, wherein, inter alia, the following stand has been taken in para-5 of the preliminary objections of the written statement filed on behalf of respondent No. 4 :-

*“5. That the petitioner has concealed material facts from this Hon’ble Court. It is stated that after counting the votes that were cast in Booth No. 65 to 70, Returning Officer and the answering-respondent, who was the Presiding Officer of Booth No. 65, declared Sh. Kuldeep Singh s/o Mr. Hoshiyara as elected for the post of Sarpanch in format-21B. Thereafter Format-19 was prepared by concerned Assistant Returning Officer and Presiding Officer (Booth No. 66 to 70) after counting the votes cast in EVMs in Booth No. 66 to 70. Final Form-19 was prepared after getting Form-19 from all the booths of village Buana Lakhu. During all this process, a huge crowd gathered at Booth No. 65 and the atmosphere on the spot became very tense. Meanwhile, the Returning Officer, answering, Sector Supervisor and Duty Magistrate informed the Control Room and Deputy Superintendent about the situation immediately. Thereafter the Deputy Superintendent along with the police force reached the spot and took out the polling*

*party from the booth and brought them safely to the control room. Mr. Mohit Kumar s/o Mr. Sukram Pal, the candidate for the post of Sarpanch of village Buana Lakhu, reached the control room (SDPM, City, G.T. Road, Panipat) along with his family members and supporters and presented his case before the Returning Officer and the answering-respondent. Mr. Mohit Kumar s/o Mr. Sukram Pal registered his protest against the above decision and stated that the result has been wrongly declared. After this, the answering-respondent and Assistant Returning Officer (Booth No. 66 to 70) observed the Format-19 prepared by them and the video recording made during the process of counting was also seen again. During this process, Assistant Returning Officer (Booth No. 69), Mr. Braj Pal submitted in writing that there was a mistake/error in the serial number of the candidates while declaring the result and due to which there was a difference in the votes of the candidates. He further stated that the above be corrected and result of the Sarpanch be declared again. Answering-respondent found that the information given earlier by Sh. Braj Pal in Form 19 was wrong and that there was a mistake/error in that information and when the error was rectified, it was found that the winner was infact Sh. Mohit Kumar. Thereafter the petitioner i.e., Mr. Kuldeep Singh s/o Mr. Hoshiyara, who was declared the winner by the Returning Officer (Booth No. 65), was called to the control room (SDVM, City, GT Road, Panipat) through telephone and informed that there was an error in while declaring the result. Petitioner was requested to return the Election Certificate Format-21 B but the petitioner refused to return the Election Certificate. Finally, Mr. Mohit Kumar was declared as the winner, which matches*

*with the EVM. Thereafter a detailed report was submitted by the Returning Officer to the Deputy Commissioner, Panipat. It is pertinent to state here that there was no recounting of votes but an error which was corrected. ....”*

8. Further, in response to para-5 of the writ petition, respondent No. 4 has stated as under :-

*“5. Para 5 of the writ petition is wrong and denied. It is stated that the Assistant Returning Officer (Booth No. 69) Mr. Braj Pal submitted in writing that there was a mistake/error in the serial number of the candidates while declaring the result and due to which there was a difference in the votes of the candidates. He further stated that the above be corrected and result of the Sarpanch be declared again. Answering-respondent found that the information given earlier by Sh. Braj Pal in Form 19 was wrong and that there was an error in that information and when the error was rectified, it was found that the winner is Sh. Mohit Kumar. Thereafter the petitioner i.e. Mr. Kuldeep Singh s/o Mr. Hoshiyara, who was declared the winner by the Returning Officer (Booth No. 65), was called to the control room (SDVM, City, GT Road, Panipat) through telephone and informed that there was an error in while declaring the result. Petitioner was requested to return the Election Certificate Format-21 B but the petitioner refused to return the Election Certificate.”*

9. A perusal of the paperbook would show that subsequently a detailed written statement dated 16.08.2023 has also been filed on behalf of respondents No. 1 to 3, wherein a copy of Enquiry Report dated 01.03.2023 (Annexure R-1), submitted by the Additional Deputy Commissioner-cum-

Chief Executive Officer, Zila Parishad, Panipat has been attached. The relevant extract of the enquiry report dated 01.03.2023 reads as under :-

“ ..... According to the report the Returning Officer & Presiding Officer appointed for election to the post of Sarpanch of Village Buana Laku has completed the counting of votes poled in the EVM (Booth No. 65) and from Booth No. 65-70 and after receiving the report from each booth and Form No. 19, the results was prepared and thereafter Sh. Kuldeep Singh son of Sh. Hoshiara, resident of Village Buana Laku was declared Sarpanch as per Form No. 21 (B) and Mohit Kumar son of Sh. Sukram Pal, resident of Village Buana Laku was on second number. Thereafter, Sh. Mohit Kumar son of Sh. Sukram Pal, resident of Village Buana Laku reached Control Room alongwith his family members and the supporter (S.D.V.M, City, G.T. Road, Panipat) and they registered their complaint before the Returning Officer and Presiding Officer (Booth No. 65) and argued their case and stated that wrong result has been prepared. Thereafter, Returning Officer & Presiding Officer (Booth no. 65) and Assistant Returning Officer (Booth No. 66-70) re-analysed Form no. 19 and saw the video prepared at the time of counting of the vote in EVM. During this the Assistant Returning Officer (Booth No. 69) Sh. Brij Pal found that he has committed a mistake at the time of preparing Form No. 19 of the candidate and placed the candidate wrongly by changing their serial no. due to mis-understanding and due to this reason the number of vote received by the candidates was wrongly entered. Assistant Returning Officer (Booth No. 69) Sh. Brij Pal has recorded his statement in this regard and he has prepared Amended Form No. 19. On

*the basis of the same Returning Officer (Booth No. 65) again prepared all Form no. 19 as final and came to know that Sh. Mohit Kumar son of Sh. Sukram Pal, resident of Buana Laku has secured highest number of votes. Returning Officer (Booth no. 65) called Sh. Kuldeep Singh son of Sh. Hoshiara by way of making telephonic call to the Control Room (S.D.V.M. City GT Road, Panipat) who was earlier declared winner and he was apprised of the mistake committed at the time of preparing the result and requested him to return the certificate of election issued to him, but Sh. Kuldeep Singh son of Sh. Hoshiara refused to return the Election Certificate. Thereafter, Returning Officer (Booth No. 65) re-prepared form no. 21(B) and declared Sh. Mohit Kumar son of Sh. Sukram Pal as Sarpanch of Village Buana Laku and updated the name of Sh. Mohit Kumar son of Sh. Sukram Pal as Sarpanch of village Buana Laku on the online portal of the Government (The report is attached as Flat A).*

*The Presiding Officer of Booth No. 69 Sh. Brij Pal has tendered a written statement that, "I Brij Pal Presiding Officer Booth no. 69 has committed a mistake at the time of releasing the result (Sarpanch) of the candidate for the post of Sarpanch, by putting them at wrong serial number. Due to which the votes of the candidates got differed. It may be corrected and result of the Sarpanch may be declared again" (enclosure attached as Flag B).*

*Sh. Pankaj Patidaar Presiding Officer Booth no. 65 Buana Laku has also recorded his statement to the effect that, "I was appointed as Returning Officer for village Panchayat Buana Laku. It was my duty to prepare Form no. 19 candidate wise in respect of all the Booth*

*(Sr. 67-70) and declare the entire result as per the Sr. No. of the candidate. I have received the result in Form no. 19 from Sh. Brij Pal Presiding Officer in respect of Booth no. 69 candidate wise and accordingly declared Kuldeep Singh son of Sh. Hoshiara as winning candidate and issued Form no. 20(B) to him. But the information submitted by Sh. Brij Pal vide Form no. 19 was wrong which was having clerical mistake. When the mistake was corrected then Sh. Mohit Kumar son of Sh. Sukram Pal was found to be winning candidate. Hence, Mohit Kumar was declared winner which is matching with EVM Machine. Hence, Form no. 21 (B) which was issued to Kuldeep Singh is invalid and Form no. 21 (B) issued to the winner Mohit Kumar is valid (Enclosure attached as Flag C).*

*The undersigned has called the meeting for investigating the above said matter on 21.02.2023 which was attended by Sh. Jagbir Singh and Naveen on behalf of Sh. Kuldeep Complainant and from other side Sh. Mohit Kumar and Sukram Pal & Block Development Panchayat Officer, Israna, Managing Director Sugar Mill, Panipat and Account Officer Zila Parishad Panipat. The complainant party stated that their complaint may be treated as their statement. Thereafter, Sh. Mohit Kumar son of Sh. Sukram Pal resident of Village Buana Laku has shown the Ballot paper used in the election to the undersigned. The Sr. No. of the contesting candidates in the Ballot Paper used in the election is shown as under (enclosure attached as Flag D)*

xxxxx      xxxxx      xxxxx      xxxxx

*On perusal of the available record and the documents in the concerned file in connection with the election result of all the Booth no.65,66, 67, 68, 69 & 70*

*of Village Buana Laku it appears that Sh. Mohit Kumar son of Sh. Sukram Pal has rightly been declared as Sarpanch of Village Buana Laku, however, it's verification cannot be done without seeing the election result in the EVM Machine which is possible only after taking approval from State Election Commission Haryana, Panchkula. It is beyond the jurisdiction of the undersigned to see the result again in the EVM Machine without the permission."*

10. Respondent No. 5 has also contested the instant writ petition by filing his written statement, wherein it has been, inter alia, stated that the Presiding Officer/Returning Officer had illegally changed the sequence of the candidates in the electronic machines and the votes polled in favour of respondent No. 5 in polling booth No. 69 were illegally shown in favour of the petitioner. Respondent No. 5 has maintained in his written statement that there is no re-counting in this case and upon objection being raised by him, the videography carried out during the counting was viewed again and thereafter, the Returning Officer corrected the result sheet, re-prepared the result sheet i.e. Form No. 19 and declared respondent No. 5 as the winning/successful candidate for the post of Sarpanch of village Buana Lakhu. Respondent No. 5 further claims that Forms No. 19 and 21-B, issued to the petitioner, are false. In response to para-2 of the writ petition, respondent No. 5 has taken the following stand in para-2 of his reply on merits :-

*" ..... In view of the objection raised by answering respondent no. 5, Returning officer has corrected his mistake and declared answering respondent no. 5 as successful candidate and also issued Form no. 21-B in*

*favour of answering respondent no. 5. The form no. 19 and Form no. 21-B issued to petitioner are false, illegal and against the final result sheet (Form no. 19 and Form no. 21-B) issued to answering respondent after correction of the mistake committed by Returning Officer.”*

11. We have heard learned counsel for respective parties and have perused the paperbook with their able assistance.

12. Learned counsel for parties have argued primarily on the basis of their stand, as extracted above from their pleadings.

13. It is the case of the petitioner that after polling was conducted, the counting was carried out on the same day and thereafter, the Returning Officer had declared the petitioner as elected Sarpanch of village Buana Lakhu and Form No. 19 as well as Form No. 21-B were issued in his favour, however, subsequently, at the instance of respondent No. 5, the result of election of Sarpanch of village Buana Lakhu has been re-prepared without there being any such enabling provision in that regard in the Haryana Panchayati Raj Act, 1994 or the Rules namely Haryana Panchayati Raj Election Rules, 1994. It is the stand of the petitioner that after declaration of result of the election, the Returning Officer/Presiding Officer becomes *functus officio* and he has no jurisdiction to change or modify the result, which already stands declared. It is further submitted that the power of re-counting has been provided for under Rule 69 of Haryana Panchayati Raj Election Rules, 1994 and a perusal thereof would manifest that as per Section 69 (6), once the re-counting has been complete, no application for re-counting can be entertained and even otherwise, application for re-counting has to be made in writing, whereas no such application has been made in the

instant case and the election result declaring the petitioner as elected Sarpanch has been wrongly and illegally changed at the instance of respondent No. 5 in his favour, which is not sustainable in the eye of law.

14. On the other hand, learned counsel for official respondents No. 1 to 4 as well as respondent No. 5 have maintained that although the election result was declared by the Returning Officer/Presiding Officer, wherein the petitioner was declared as elected Sarpanch and Form No. 19 and Form No. 21-B were issued in his favour, yet, on the objection of respondent No. 5, the videography/records were checked again and upon finding that there was an error while declaring the result, the result was re-prepared and respondent No. 5 was declared as the successful candidate.

15. On a pointed query by the Court, it has been conceded by learned counsel for official respondents No. 1 to 4 as well as respondent No. 5 that there is no written application made by respondent No. 5 for re-counting of votes. Further, learned counsel for the respondents have failed to indicate any provision in the 1994 Act and/or the relevant Rules to show that after the result of election is declared, there is any power bestowed upon any officer/authority to change the result.

16. Upon perusal of the stand taken by the official respondents as well as respondent No. 5, it is evident that initially it is the petitioner, who was declared as the elected Sarpanch of village Buana Lakhu and Form No. 19 as well as Form No. 21-B was issued in favour of petitioner by the Returning Officer.

17. The reasoning put-forth by the official respondents as well as respondent No. 5 for correcting the election result and re-preparing the Form

No. 19/21-B in favour of respondent No. 5 is that the Presiding Officer of Polling Booth No. 69 had wrongly prepared the result of votes of the said booth No. 69; which was subsequently checked by looking at the videography and accordingly the mistake in preparation of result as regards votes of polling booth No. 69 by its Presiding Officer was corrected and the final result of election was re-prepared, whereupon respondent No. 5 was declared as elected.

18. We have considered the above extracted stand as well as the submissions of the learned State counsel representing official respondents and also the learned counsel representing respondent No. 5; however, we are afraid that the stand/submissions raised on behalf of official respondents as well as the respondent No. 5 cannot be accepted in view of the settled law that once the result has been declared then the same cannot be set aside/altered by the returning officer and only remedy available to an aggrieved party is to file an election petition.

19. In somewhat similar circumstances, Hon'ble the Supreme Court in the case of ***Malkit Kaur Versus Jatinder Kaur, 2001 (Sup2) JT 157***, held as under :-

*“2. Learned counsel appearing for the appellant urged that earlier there being mistake and error in form IX prepared by the Returning Officer, the authority was justified in law to correct the form IX subsequently and the High Court committed error in setting aside the subsequent order of the Returning Officer. We do not find any substance in the argument. Under the Act and the Rules thereunder once a candidate has been declared elected in the*

*form IX, the Returning Officer ceases to have any power to alter the said declaration subsequently. The declaration as contained in form IX could only be challenged by means of an election petition before an appropriate tribunal. In that view of the matter, we do not find any merit in this appeal. ....”*

20. A similar view was taken by a Division Bench of this court in ***Kashmir Kaur Versus State of Punjab, 2004 (1) RCR (Civil) 580*** and ***Jasmal Kaur Versus Punjab State Election Commission, 2009 (1) RCR (Civil) 684***.

21. Learned State counsel fairly conceded that in view of the order passed by the Hon'ble Supreme Court in ***Malkit Kaur's*** case (supra), they cannot defend the action taken by respondent No. 4 to revise the entries recorded in Form 19 and Form 21-B, moreso when there was no written request made by respondent No. 5 for re-counting of votes.

22. In view of the above, the instant writ petition is allowed. It is held that after the petitioner was duly declared elected as Sarpanch of Gram Panchayat Buana Lakhu and Form 19 and Form 21-B stood issued in favour of the petitioner, then subsequent to declaration of such result, the respondent No. 4 did not have the jurisdiction to alter or change or correct the so-called mistake in Form 19 and Form 21-B in favour of respondent No. 5. Consequently, the action of the concerned authority to declare respondent No. 5-Mohit Kumar as elected Sarpanch by issuing a revised/fresh Form 19 and Form 21-B, in his name, subsequent to declaring petitioner as elected Sarpanch of village Buana Lakhu upon issuance of Form 19 and Form 21-B, in the name of petitioner; is declared illegal and accordingly the Election

Certificate Form No. 21-B dated 02.11.2022 (Annexure P-3), issued to respondent No. 5 (Mohit Kumar) is set aside. Respondent No. 4 is directed to notify the name of the petitioner as an elected Sarpanch of Gram Panchayat Village Buana Lakhu and respondent No. 4 is directed to ensure that the petitioner is administered oath of office of the post of Sarpanch within a period of 15 days from the date of presentation of copy of this order.

However, liberty is given to respondent No. 5 to challenge the election of the petitioner by filing an election petition under Section 176 of Haryana Panchayati Raj Act, 1994 and it is hoped that the petition filed by respondent No. 5 will be disposed of by the Election Tribunal as early as possible but latest within 3 months after the service of notice.

23. No other point has been urged.

24. The instant petition is accordingly disposed of in the aforesaid terms.

25. All pending application (s), if any, shall also stand disposed of.

(SUDHIR SINGH)  
JUDGE

(HARSH BUNGER)  
JUDGE

05.03.2024  
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No