

PUNJAB AND HARYANA HIGH COURT

Kishan Kaur

Vs

Shanti Devi

(D.K.Mahajan, J.)

08.03.1996

JUDGEMENT

D.K.Mahajan, J.

(1.) THE petitioner has filed this revision under Article 227 of the Constitution of India for quashing the impugned order dated December 14, 1995, of the additional Senior Judge-cum-Election Tribunal, Safidon, district Jind, whereby recount of votes has been ordered.

(2.) ADUMBRATED facts of the case are that respondent No. 1 (Smt. Shanti Devi) filed an election petition on February 14, 1995. Petitioner filed her written statement on May 20, 1995. Respondent No. 1 without leading any evidence filed a petition Annexure P-1 on August 26, 1995, alleging that she has relinquished her ground taken in para 2(ii) of the petition and only claims recounting by re-examining ballot papers and also by calling missing ballot papers wrongly put in the other boxes at the time of simultaneous voting for the members of the Block Samiti and Zila Parishad. The petitioner filed reply Annexure P-2 wherein she objected that without recording evidence for recount cannot be passed. She also denied that three ballot papers were wrongly put in the other boxes at the time of simultaneous voting for the members of Block Samiti and Zila Parishad. An objection was also raised that the election-petitioner has no right to summon the ballot boxes of the election of Zila Parishad and Block Samiti in this manner. By the impugned order Election Tribunal allowed the respondent-election petitioner's petition Annexure P-1 by holding that the petitioner has given up her other ground of challenge with regard to corrupt practices and is only making a prayer for recount, which falls within the ambit of Section 176(4)(b) of the Haryana Panchayati Raj Election Act, 1994 (in short, the Act), which does not require any enquiry. It also held that this provision has made it obligatory for the Court to make a scrutiny and computation of votes polled in favour of each candidate in all the cases where validity of an election is disputed between two or more candidates and where the challenge is not founded on any allegation of corrupt practice. Relying on Smt. *Rajwati v. Smt. Rajesh Kumar*¹, the Election Tribunal while allowing the respondent-election petitioner's petition ordered recount of the votes. During arguments, petitioner's learned counsel, relying on *Dharam Pal Rana v.*

*Dilbagh Singh*², vehemently argued that recount of votes cannot be held without recording evidence. Parties before the Tribunal should lead their evidence on the question whether the case for recount is made out or not. After their evidence, the Election Tribunal should pass an appropriate order in accordance with law. Respondent's learned counsel, relying on Smt. Rajwati's case 1995 (2) CLJ 636 (supra), argued that where in the election petition the challenge is not to the corrupt practice but only a prayer for recount is made, the Court should make a scrutiny and computation of votes polled in favour of each candidate. In the aforementioned judgment it is held that the deliberate omission by the legislature of requirement of an enquiry as a condition precedent to an order for scrutiny and computation of votes shows that the legislature intended that instead of finally depending on the counting of votes made by Returning Officer in the changed election scenario in the country, the Court should be vested with the power and a duty to scrutinise and compute the votes polled in an election held for panchayats and where the election is subject to challenge by way of petition under Section 176 of the Act. The Court has been made a final arbiter on the question of number of votes polled by candidates in an election to the panchayat. It is further held that scrutiny and computation shows that it is for the Court to scrutinise each ballot paper and then compute the votes recorded in favour of each candidate and then declare result in favour of the person who secured the largest number of valid votes.

(3.) THE moot question for decision is whether an order of recount has to be necessarily passed where the validity of the election is challenged on the ground other than corrupt practices, even though there are no pleadings for cogent evidence warranting the order of recount. To decide that question, it is relevant to consider Rules 62 to 72 of the Haryana Panchayati Raj Election Rules 1944, dealing with the recount of votes. In *Bharat Singh v. Dalip Singh*³, a Division Bench of this Court has held that these Rules are pari materia with Rules 53 to 63 framed under the Representation of People Act, 1951, known as the Conduct of Election Rules, 1961, which also deal with recount of votes. Section 183 of the Act emphasises the maintenance of secrecy of votes. The provisions in the Representation of People Act, 1951, and the Rules framed thereunder regarding recount have come up for interpretation in a number of cases. The Apex Court has held that recount is not to be granted as a matter of course or right. Recount can only be granted where proper foundation of material facts has been laid in the pleadings of the parties duly supported by reliable evidence, which could satisfy the Court that in order to decide the dispute, the inspection of ballot is necessary. In *Ram Sewak Yadav v. Hussain Kamil Kidwai*⁴, the Apex Court has held :- "An order for inspection may not be granted as a matter of course; having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled :(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and(ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary." ;

Cases Referred.

11995 (2) CLJ (Civil Crl. and Revenue) 636

2(1995) 3 PLR 513

3(1966) 1 PLR 70

4AIR 1964 SC 1249