

CASE NO.:
Appeal (civil) 3165 of 2006

PETITIONER:
Sadhu Singh

RESPONDENT:
Darshan Singh & Anr

DATE OF JUDGMENT: 26/07/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 85 of 2005)

S.B. SINHA, J.

Leave granted.

The appellant herein contested an election held on 29.6.2003 to the post of Sarpanch of the Gram Panchayat of Village Bareh, Tehsil Budhlada in the State of Punjab. The appellant herein was declared elected. He won by a margin of 11 votes. The 1st respondent filed an election petition, inter alia, contending that while counting the ballot papers, 147 votes were wrongly rejected. It was further averred that the counting staff headed by the Presiding Officer intermingled about 25 ballots, which were polled in his favour in the bundles of the elected candidate and had the said votes been counted in his favour he would have been declared elected. By reason of an order dated 29.6.2004, the Election Tribunal directed recounting of the ballot papers. The validity of the said order was questioned by the appellant herein by filing a revision application before the High Court of Punjab and Haryana, which was numbered as Civil Revision No.3194 of 2004. By reason of the impugned judgment, the said revision application has been dismissed.

Mr. C.L. Sahu, learned counsel appearing on behalf of the appellant, inter alia, would submit that the Election Tribunal and the High Court clearly committed an error in directing recounting of the votes. It was urged that while so directing the necessity to maintain secrecy of ballot papers which is sacrosanct, have been overlooked on frivolous, vague and indefinite allegations. There had, thus, been no adequate material, Mr. Sahu would urge, to direct recounting of the votes.

Mr. J.K. Das, learned counsel appearing on behalf of the respondents, on the other hand, would support the impugned judgment.

From a perusal of the election petition filed by the 1st respondent herein it appears that he obtained 1313 votes, whereas the appellant obtained 1324 votes. It was clearly averred that 147 votes were wrongly rejected. The Presiding Officer was arrayed as respondent No.2 in the election petition. The learned Tribunal opined that the direction for recounting of votes was necessary, upon satisfying himself that although no written request for recounting was made, respondent No.1 in his evidence stated an oral request clearly been made therefor, but the same had been turned down by the Presiding Officer. The learned Tribunal also

took into account the fact that the appellant herein in his evidence did not state as to how many votes had been rejected due to non-affixation of stamps or how many of them had been rejected where double stamps were affixed. The Tribunal furthermore took into account the statement of the 1st respondent herein that 24-25 votes polled by him were intermingled with the votes of the appellant.

The High Court in its impugned judgment opined :

"In the instant case, as it has specifically been alleged by the election petitioner that no reasons have been given while rejecting the votes, therefore, it is imperative to have a look at the rejected ballots to find out whether they have been rightly rejected or not."

Concededly the following factors are relevant for directing recounting of votes:

- 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 recounting of votes;
- iv) an objection to the said effect should be raised; and
- v) secrecy of ballot papers should be maintained.

{See Gursewak Singh vs. Avtar Singh & Ors. [(2006) 4 SCC 542]; M. Chinnasamy vs. K.C. Palanisamy [(2004) 6 SCC 341]; Chandrika Prasad Yadav vs. State of Bihar [(2004) 6 SCC 331] and Tanaji Ramchandra Nimhan vs. Swati Vinayak Nimhan & Ors. [(2006) 2 SCC 300].}

In the instant case, a finding of fact has been arrived at that the 1st respondent had raised an objection as regards the manner in which the ballot papers had been counted by the officers. The said finding of fact was arrived at after the parties adduced their respective evidence. The Tribunal has also, in view of the materials brought on records by the parties, directed recounting of votes as the number of ballot papers was stated to have been rejected was 147, which exceeded the margin of 11 votes by which margin the appellant was declared elected.

The 1st respondent was found to have made out a prima facie case for recounting of votes by both the Tribunal and also the High Court on the premise that a large number of votes might have wrongly been rejected. The margin of votes polled by the appellant vis-à-vis the 1st respondent, although would not be of much relevance but the said fact alone was not the basis for passing the impugned judgment. The 1st respondent herein not only lodged protests in regard to the manner in which the Presiding Officer counted the votes, but had also urged him to recount the votes. He had also given specific instances in respect thereof in his election petition. The Election Petitioner, furthermore, not only placed necessary facts in his election petition but also in his deposition before the Tribunal categorically stated that the Presiding Officer did not assign any reason for declaring a huge number of votes as invalid. We have noticed hereinbefore that before the Tribunal a contention had been raised by the 1st respondent that 25 votes polled in his favour were wrongly counted in favour of the appellant by intermingling them with the ballot papers.

We, therefore, are satisfied that the conditions precedent necessary for a direction of recounting of votes stand satisfied. For

the reasons aforementioned, no case has been made out for interference with the impugned judgment. The appeal is dismissed. No costs.

JUDIS