



CR-4350-2025

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

CR-4350-2025

Date of Decision: 11.09.2025

RANJIT SINGH

....Petitioner

Versus

ELECTION TRIBUNAL-CUM-SUB DIVISIONAL MAGISTRATE
MALOUT AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. K.B.S. Mann, Advocate
 for the petitioner.

 Mr. Puru Jarewal, DAG, Punjab.

 Mr. Rajinder Singh Bhatta, Advocate
 for respondent No.2.

Parmod Goyal, J. (Oral)

Present petition has been preferred by a successful candidate, who is respondent in election petition, whereby Election Tribunal-cum-Sub Divisional Magistrate, Malout vide impugned order dated 10.07.2025, had ordered recounting of votes. Election Petition challenging the election of petitioner/respondent as Sarpanch of a Village was filed by respondent/applicant on the ground that petitioner had got 1434 votes, whereas respondent No.1 has got 1476 votes. Respondent No.1 was declared winner by a difference of 42 votes.

2. It was further alleged that 82 votes were rejected and at the time of rejection of votes, the presiding officer had not given reasons for its



rejection. It is alleged that votes were wrongly rejected and therefore, prayer for recounting was made.

3. Learned Tribunal vide impugned order dated 10.07.2025, ordered for recounting of votes. Admittedly, on institution of election petition, notice was issued to petitioner/respondent. He contested the election petition and denied all the allegations made by the applicant/unsuccessful candidate. Thereafter, parties were asked to lead their respective evidence. It is the case of petitioner that no issues were framed and parties were directly put to evidence. It is also not in dispute that 2 PWs were duly examined in examination-in-chief and their cross-examination was deferred. Learned counsel for petitioner has argued that learned Election Tribunal has erred in allowing recounting, which is the final relief and also without completing the evidence being led by applicant.

4. He has placed reliance upon following judgments i.e. **Jagdish Singh Versus Election Tribunal-cum-Sub Divisional Magistrate, Budhlada and Others**, 2023 (2) PLR 198, **Pardaman Singh Versus State of Punjab**, 1996 AIR Punjab and Haryana 280, **Udey Chand Versus Surat Singh and Anr.**, 2009 (10) SCC 170, **Sadhu Singh Versus Sub Divisional Magistrate-cum-Presiding Officer and Others**, 2023 (1) PLR 80 **Gurnam Bindra Singh Versus State of Punjab and others**, 2008 (4) RCR (Civil) 741 and **Dalvir Singh Versus Gurdeep Singh and another**, 2015 (4) RCR (Civil) 856.

5. It is asserted that applicant is seeking roving and fishing inquiry and the same cannot be allowed by way of impugned order. On the other



hand, learned counsel for respondent/applicant has placed reliance upon a judgment of Hon'ble Supreme Court titled ***Sadhu Singh v. Darshan Singh and Another***, 2006 (4) RCR (Civil) 55 and argued that all the conditions stated by Hon'ble Supreme Court for ordering recounting are duly fulfilled. It is further argued that petitioner with *mala fide* intention to delay the matter has not cross-examined the witnesses produced by the applicant and has sought repeated deferments for cross-examination (numbering 4).

6. I have heard learned counsel for the parties. The argument that recounting is final relief and therefore, cannot be ordered, is totally fallacious. The final relief sought by applicant is for setting aside elections by declaring that respondent No.1/petitioner has not succeeded in the elections. Recounting is for the purpose of determining right of parties, therefore, it is not the final relief to which applicant would be entitled, rather it is material upon which election can be held valid or can be invalidated.

7. It is clearly made out that principles stated in all the judgments referred by both the sides regarding recounting is that recounting cannot be allowed merely to conduct roving and fishing inquiry. Before recounting is ordered, the Election Tribunal is bound to see the following factors: (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; and (iv) an objection to said effect should be raised and secrecy of ballot papers should be maintained. It is therefore, to be seen whether the order passed by Election Tribunal is compliant with the conditions found mandatory prior to



recounting. Perusal of impugned order goes to show that vide impugned order dated 10.07.2025, the Election Tribunal has concluded that *prima facie* case for recounting is made out as applicant/respondent has lost by a margin of 42 votes, whereas number of rejected votes is 82. It is to be seen whether material facts regarding irregularities in counting of the votes were alleged by petitioner or not. In the present case, perusal of election petition goes to show as one of the relief, applicant/respondent has sought recounting of votes.

8. Following grounds were specifically asserted :-

- “3. That the election of respondents no.1 wrong, illegal, void to be set aside interlia on the following grounds:-
- i) That the election was not fair and as per procedure laid down and has materially affected the election by wrongful reception of votes in favour of the respondent No.1.
 - ii) That the polling staff remained delinquent in performing the duty casted upon them by S.21 of the Act. They were bound to keep order and to see that the polling fairly taken place but they acted in such a manner which was far away from fair norms and it materially affected the result.
 - iii) That the process of counting of votes is defiant and violative as the statutory provisions of S.66 and rule 32 of the Panchayat Election Rules have not been complied with. The presiding officer ought to record briefly the grounds for rejection of ballot papers and also brief record of the Sr number of ballot papers rejected but no such record is prepared or made known to the petitioner.
 - iv) That the process of counting adopted by the respondent no.4 to 8 is illegal.
 - v) That before the polling process started, the petitioner and his polling agents were not allowed to check the ballot boxes which is totally illegal.
 - vi) That after the polling of the votes completed, the ballot boxes were taken into possession by the Returning Officer without sealing the same, in an illegal manner.
 - vii) That the supporters of the respondent no.1 were having free access to the counting table while the petitioner and his supporters including the counting agents were not allowed to



take part in the counting of the votes so much so, they were also not shown the votes cancelled by the Returning Officer although the same could have been cancelled only after the consent of all the candidates and their counting agents.

- viii) That the majority of the votes poled was towards the petitioner but however the votes poled in favour of the petitioner, have been illegally counted in the account of the respondent no.1 in order to declare him elected by hook or crook.
- ix) That the invalid votes poled in favour of the respondent no.1 have also not been cancelled by the returning officer rather the same have been illegally accepted and counted in the account of the respondent no.1.
- x) That 82 invalid votes poled in favour of the petitioner has been wrongly and illegally cancelled by the respondents no.4 to 8.
- xi) That the election staff was served with liquor etc by the respondent no.1 one day prior to the election and respondents no 5 and 7 were openly favour the respondent no.1 from the very beginning of the election process.
- xii) That the recounting of votes was not done despite protests and requests and even written application has not been accepted by respondents No.4 and 6.
- xiii) That the returning officer had not got checked the seals on the ballot boxes and acted arbitrarily.
- xiv) That at the time of counting petitioner was not allowed to raise any objection and the signature of counting agent of petitioner has been obtained by the presiding officer at the time of starting of counting.
- xv) That the light made to go for few minutes twice during the counting and during that period, the votes of the petitioner were mixed with votes of respondent No.1 malafidely and respondent No.1 declared won by 42 votes. As per result 1476 votes secured by respondent no.1 and 1434 votes secured by petitioner, 286 votes secured by respondent No.2 and 23 votes secured by respondent No.3 and 23 votes secured by respondent No.3 and 82 votes were cancelled. Most of the cancelled votes poled in favour of petitioner but the same has been illegally cancelled by the respondents No.4 to 8 in order to favour the respondent No.1.
- xvi) That after poling of votes, respondent No.6 PRO of booth No.58 has orally disclosed that 660 votes poled in the said booth but at the time of counting he said that 610 votes have been poled as such there is difference of 50 votes which has been illegally left uncounted by presiding officer and as such



the ballot papers may kindly be matched with the used and unused book of ballot papers.”

9. Perusal of election petition clearly shows that applicant/respondent has specifically alleged various irregularities in the counting of votes. Applicant/respondent had appeared as PW1 and had tendered his affidavit stating facts as stated by him in the election petition. He had also examined another witness as PW2, who had also filed an affidavit, stating facts which were alleged by applicant/respondent in his election petition.

10. On 12.03.2025, counsel for petitioner has sought time to produce evidence and applicant/respondent got his statement recorded. On 19.03.2025, applicant/respondent was present and his examination-in-chief was recorded, however, on the request of learned counsel for respondent, matter was adjourned to 26.03.2025. On 26.03.2025 and 09.04.2025, though the witnesses were present, however, matter was adjourned on the request of learned counsel for respondent for cross-examination of witnesses. Perusal of file and impugned orders which are available from page No.60 to 62 (Annexure P-5), along with paperbook goes to show that at no stage cross-examination was concluded or evidence of respondent was closed. It is to be noticed that after 09.04.2025, case was fixed for 16.04.2025, when the case was simply adjourned to 23.04.2025. On 23.04.2025, applicant/respondent as well as another witness Harjit Singh were present, however, on account of suspension of work by lawyers, evidence could not be recorded, therefore, on the adjourned date for 07.05.2025 and 21.05.2025, the case could not be taken up as presiding officer was on leave or was transferred. On



04.06.2025, both the counsels had sought time for arguments and again on 02.07.2025, arguments were partly heard and matter was kept for remaining arguments on 10.07.2025, when the impugned order was passed.

11. On perusal of above noted gist of zimini orders which are not in dispute, it is clearly made out that cross-examination of witnesses have not been closed and impugned order was passed.

12. In these circumstances, I feel it appropriate to remand the case back to Election Tribunal by quashing the impugned order as evidence in support of his election petition without cross-examination of witnesses of applicant/respondent is not complete. Accordingly, impugned order dated 10.07.2025 is set aside. The matter is remanded back to Election Tribunal. The Election Tribunal shall give one opportunity to petitioner/respondent No.1 to cross-examine the witnesses. After cross-examination of witnesses the application for recounting has to be heard on merits and thereafter, on consideration of pleadings and evidence of petitioner in support of his allegations made in election petition only for the purpose of recounting, Election Tribunal shall appreciate the facts to conclude *prima facie* case as well as material facts stated about the irregularities in counting of votes and regarding satisfaction that no roving and fishing inquiry is being made. The order of recounting, if ordered, shall also keep secrecy of ballot papers intact. Since present is an election petition, it would be in the interest of both the parties that entire exercise by Tribunal i.e. allowing petitioner/respondent No.1 to conduct cross-examination and to argue the matter as per material available on the plea of recounting is concluded on day to day basis within



next 10 days.

13. Parties are directed to appear on 15.09.2025, before the Election Tribunal. It will be the duty of petitioner to bring his witnesses for cross-examination. Cross-examination shall be conducted on the same day, without any further adjournment. Thereafter, Tribunal shall hear arguments and conclude whether any case for recounting is made out from the allegations raised by petitioner in accordance with the parameters noted above.

14. Petition is accordingly disposed of with above directions.

11.09.2025
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No