

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-2717-2025 (O&M)****Reserved on: 27.05.2025****Date of pronouncement: 01.07.2025****Kuldeep Singh****...Petitioner(s)****Vs.****Mohit Kumar & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Argued by:-

Mr.Ashish Aggarwal, Senior Advocate with
Mr. Vikram Singh, Mr. Vishal Pundir, Mr. ARS Dhillon,
Mr. Saket Bhandari, Mr. Devansh Verma and
Mr. Ishnoor Singh, Advocates
for the petitioner.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. Arjun Kaushal and Ms. Pawelpreet Kaur, Advocates
for respondent No.1.

NIDHI GUPTA, J.

Challenge in the present Revision Petition is to the order dated 22.04.2025 (Annexure P-15), passed by the Election Tribunal, Panipat whereby the application filed by the Election petitioner/respondent No.1 herein, for recounting of votes, has been allowed.

2. Briefly stated the facts are that the petitioner and respondent no.1 had contested for election of Sarpanch of Gram Panchayat, Buana Lakhu, District Panipat which was conducted on 02.11.2022. The petitioner was declared elected. However, upon a recount of votes conducted on 2.11.2022 itself, the respondent no.1 was



then declared elected as Sarpanch on 2.11.2022. This action was challenged by the petitioner before this Court by way of CWP No.25694 of 2022, which was allowed vide order dated 5.3.2024 (Annexure P-1). However, liberty was granted to the respondent no.1 to file election petition. In the said election petition, the respondent no.1 filed instant application seeking recount of votes; which has been allowed vide impugned order. Hence, present revision petition.

3. It is inter alia submitted by learned Senior Counsel appearing on behalf of the petitioner that the first application filed by the respondent No.1 for recounting of votes already stood dismissed by the Election Tribunal vide order dated 05.07.2024 (Annexure P8). The said order was never challenged by respondent No.1. Thus, during pendency of the Election petition, there was no cause or occasion for respondent No.1 to file a second application for recounting of votes. It is contended that if votes are recounted time and again, there would be no end to this process. Moreover, the Election Tribunal had already dismissed the previous application of the respondent for recounting, and therefore, the Tribunal could not have gone against its own order (Annexure P8) in now directing that votes be recounted.

4. Learned Senior Counsel submits that if the Election Tribunal had wanted recount, it ought to have allowed the Election Petition and then ordered recount. In passing the impugned order, the Election Tribunal has exceeded its jurisdiction. Once having held that



recount would amount to allowing the Election Petition, then how can recount be ordered now.

5. Ld. Senior Counsel further submits that in any event, no fruitful purpose will be served in recounting the votes as the ballot already stood compromised. It is submitted that in election, secrecy of ballot is sacrosanct and inviolable. However, in the present case the secrecy of ballot and other election materials had been compromised. It has not been denied by Returning Officer PW7 that Ex.PW7/G which is the copy of result of Booth No.69 and deposited Form No.15, had been prepared again after opening the record and seal of the sealed covers by Presiding Officer Brijpal PW8. It is submitted that therefore, any recount if even conducted in pursuance to the impugned order would be rendered irrelevant.

6. Learned Senior Counsel submits that on 02.11.2022 itself, after having declared the petitioner as elected, a recount had already been conducted. It is submitted that the said recount dated 2.11.2022 was ostensibly on the basis of a video created by the Returning Officer Brijpal on his private phone. It is pointed out that the said video has not been proven in accordance with law; and although this fact has been recorded by the learned Tribunal in the impugned order that the said video has not been proven in accordance with law and even the pen drive in which it has been presented is unreliable, yet a recount has been ordered. It is argued that when the very basis fundamental to the dispute



at hand - which is the video/pen drive in the present case – has been held to be not proven in accordance with law, then the very basis of not just the recount but also the Election Petition is demolished. Ld. Senior Counsel argues that therefore, even the initial recount conducted on 02.11.2022 itself is shoddy; and the present recount is utterly unnecessary. In support of his contentions, learned Senior Counsel relies upon judgment of the Hon'ble Supreme Court in **“Udey Chand Vs. Surat Singh & Another” (2009) 10 SCC 170; Law Finder Doc ID # 204039**. It is accordingly prayed that the present petition be allowed, and the impugned order be set aside.

7. Per contra, learned Senior Counsel appearing on behalf of respondent No.1 submits that vide order dated 05.03.2024 (Annexure P1), the respondent No.1 had duly been given liberty by this Court to file Election Petition. Accordingly, respondent No.1 had filed Election Petition soon thereafter on dated 16.03.2024 itself. It is submitted that in the said Election Petition, an objection was received from the petitioner that same had not been filed in time. The said objection of the petitioner was dismissed by the learned Tribunal; whereupon the petitioner had approached this Court by way of Civil Writ Petition No.2825 of 2024, which was also dismissed by this Court vide order dated 30.07.2024; whereupon the petitioner had approached the Hon'ble Supreme Court vide SLP (C) No.25303 of 2024, which was also dismissed by the learned



Apex Court vide order dated 08.11.2024 categorically holding therein that
“The Election Petition is clearly within the limitation period.”

8. Ld. Senior Counsel for respondent No.1 further submits that the initial application filed by respondent No.1 before the Election Tribunal for interim recount had been dismissed vide order dated 05.07.2024 (Annexure P8) on the ground that at that stage, the matter was still at the stage of examination-in-chief of the witnesses; and therefore, it was held that interim recount was not called for. Learned Senior Counsel contends that in contrast, at the present juncture, while ordering recount vide the impugned order, the learned Tribunal was fully apprised of the entire dispute. The entire evidence had been led and concluded; findings on all the issues were duly returned by the learned Tribunal; whereupon a positive finding was given by the learned Tribunal that for the resolution of the dispute at hand, and for the proper adjudication of the matter, it was necessary to conduct recount. Learned Senior Counsel argues that after having considered the matter in its entirety the learned Tribunal had satisfied itself that for the proper adjudication of the matter, it was necessary to conduct the recount; and it is for this well thought-out and considered reason that recount was directed. It is contended that therefore, there is no error in the impugned order and the present petition is misconceived and deserves to be dismissed. In support, learned Senior Counsel relies upon judgments of this Court in **Radha Kishan v. Election Tribunal-cum-Sub-Judge, Hissar,**



(P&H)(FB) : Law Finder Doc Id # 26219; and Sandeep Vs. Election Tribunal, Karnal and Others (P&H): Law Finder Doc ID # 882838.

9. In rebuttal, learned Senior Counsel for the petitioner submits that it is incorrect for learned Senior Counsel for respondent No.1 to suggest that the matter had been finally considered by the Election Tribunal and that findings in respect of all issues had been returned by the learned Tribunal. It is submitted that no finding in respect of the most important and crucial issue has been returned by the learned Tribunal. In fact, even the evidence in the present case has not yet been concluded as vide the present/second application (Annexure P12) filed by respondent No.1 for recount of votes, a second prayer to the effect that respondent No.1 be permitted to summon witness No.9 for leading evidence in rebuttal, had also been made by respondent No.1. It is submitted that therefore, after having dismissed the first application of respondent No.1 for recount, the second application of respondent No.1 also for interim recounting could not have been allowed by the learned Tribunal.

10. No other argument is raised on behalf of the parties.

11. I have heard learned Senior counsel for the parties and given my thoughtful consideration to the rival submissions advanced on behalf of both the parties. I find no merit in the submissions made on behalf of the respondent No.1 for the reasons recorded hereinbelow: -

12. Dispute in the present case pertains to the election of Sarpanch of Gram Panchayat, Buana Lakhu, District Panipat which was



conducted on 02.11.2022. There were total 6 Booths being Booth No.65 to 70. Seven candidates had participated in the election, including the petitioner and contesting candidate - respondent no.1. The petitioner received highest number of votes being 1117 votes out of 3767 votes polled. Whereas respondent No.1 had received 804 votes out of 3767 votes. The petitioner having won by margin of 313 votes was declared elected; and Form 19 (Result of Election) and Form No.21-B (Declaration) were issued in favour of the petitioner. The result was duly signed by the Returning Officer Brijpal/ respondent No.7. No application was given by the respondent No.1 to the Returning Officer under Rule 69 of the Haryana Panchayati Raj Election Rules, 1964 (hereinafter referred to as "1964 Rules") for recounting of votes on day of polling. Accordingly, all poll material including the result, EVM, etc. was sealed under Rules 56 and 57 of the Rules. Thereafter, the petitioner had gone home. All the above had transpired on 02.11.2022 itself.

13. However, in the evening of 02.11.2022 supporters of respondent No.1 had gathered at the polling Booth No.69 and created ruckus and law and order situation. The Deputy Superintendent of Police, Panipat was informed, and Police Force was called. Subsequently, the Election Staff of Booth No.69 along with respondent no.1 and his supporters, were taken in a Bus to Control Room with the Election Record and EVM, etc. It is the case of the petitioner that at this stage, the father of the respondent No.1 and his supporters who had also gone in the Bus



to the Control Room, had tampered with the record. In the late evening of 02.11.2022, the petitioner was informed by the Returning Officer that recounting is to be done; for which the petitioner was called to the Control Room (SD School). When the petitioner reached the Control Room, he was told that he had lost the election; and Forms No.19 and 21-B had now been issued to the respondent No.1 who has been declared elected as Sarpanch.

14. The petitioner made a representation to the Chief Electoral Officer, Haryana State Election Commission, however, no action was taken.

15. The petitioner had then approached this Court by way of Civil Writ Petition No.25694 of 2022 seeking issuance of a Writ in the nature of Certiorari for setting aside the Election Certificate Form No.21-B dated 02.11.2022 issued in favour of respondent No.1 by Returning Officer/respondent No.7 after having declared the petitioner as elected Sarpanch of Gram Panchayat, Buana Lakhu and after issuance of Forms No.19 and 21-B in favour of the petitioner. The said Writ Petition was allowed by a Division Bench of this Court vide judgment dated 05.03.2024 (Annexure P1), as follows:-

“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.”

16. In face of the above said liberty granted by this Court, respondent No.1 filed instant Election Petition along with the first interim application for recounting dated 16.03.2024 (Annexure P2) with the following prayer:-

“It is, therefore, prayed that the petitioner may kindly be declared as winning candidate for the post of Sarpanch of Gram Panchayat Buana Lakha Tehsil & Block Israna District Panipat and it is further prayed that the certificate of winning



candidate issued by the Returning Officer/ Election Officer i.e. respondents no.7 & 8 may kindly set-aside, which is obtained fraudulently in by the respondent no.1 in collusion with respondents no.7& 8, in the interest of justice may kindly be passed. It is therefore, further prayed that the original record of election for the post of Sarpanch of Gram Panchayat Buana Lakhu i.e. voting Machine, voter list, voter tick mark record may kindly summoned and votes may kindly be recounted for deciding the present petition on merit, in the interest of justice.”

(Emphasis added)

17. The petitioner had filed written statement dated 16.05.2024 (Annexure P4) to the Election Petition. The petitioner also filed reply dated 16.05.2024 (Annexure P5) to the application of respondent No.1 for recounting of votes. Following issues were framed by learned Court below vide order dated 16.05.2024; and additional issue No.2A was framed on 05.07.2024:-

"1. Whether petitioner is entitled to declaration, as prayed for? OPP

2. Whether the petition of the petitioner is not maintainable in its present form? OPR

2A. Whether the election documents and EVMs were forged and tampered with after declaration of result? OPR (Respondent no.1)

3. Whether the petition of petitioner is time barred? OPR

4. Whether petitioner has concealed true and material facts and have not come to the Court with clean hands? OPR

5. Whether the petitioner has no cause of action and locus standi to file the present suit? OPR



6. Whether plaintiff is estopped by his own act and conduct to file this petition? OPR

7. Relief."

18. As pointed out above, along with the Election Petition respondent No.1 also filed the first interim application for recounting, dated 16.03.2024. Vide order dated 05.07.2024 (Annexure P8), the learned Election Tribunal had dismissed the application of the respondent No.1 seeking recounting of votes.

19. However, despite the above dismissal, during pendency of the Election Petition respondent No.1 again filed present/second application dated 'Nil' (Annexure P-12) once again, praying for recounting of the votes. The petitioner filed reply dated 'Nil' (Annexure P13) to the said application Vide the impugned order dated 22.04.2025 (Annexure P-15), the said application of the respondent No.1 has been allowed.

20. The impugned order is unsustainable on account of the fact that it is undisputed that a recount had taken place on the date of election itself, that is 2.11.2022, whereupon the result of the petitioner who had already been declared elected was reversed, and instead, respondent no.1 was declared elected. Thereafter, in the present election petition, the prayer of the Election petitioner/respondent no.1 for recounting of votes vide first interim application dated 16.3.2024, was rejected by the Tribunal vide order dated 5.7.2024 (Annexure P-8) in the following terms: -



“Perusal of election petition filed by the present applicant/petitioner shows that in the relief clause alongwith relief of declaring him as winning candidate, petitioner has also sought the further relief of summoning the original record of election for the post of Sarpanch of Gram Panchayat Buana Lakhu i.e. voting machine, voter list, voter tick mark and prayed for recounting of votes for deciding the present petition on merit.

By way of present application also, the petitioner is seeking relief of recounting the votes. Giving this relief, by way of present application, would amount to allowing the final relief as sought by present petitioner in the petition which could not be done at this stage.

Moreover, in Uday Chand Vs Surat Singh and another 2009(10) SCC, following has been held by Hon'ble Supreme Court which is relevant for deciding this application "it would be trite to state that before an Election Tribunal can permit scrutiny of ballot papers and order re-count, two basic requirements viz. (I) the election petition seeking re-count of the ballot papers must contain an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded, an (ii) on the basis of evidence adduced in support of the allegations, the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary, are satisfied'.

So for ordering recounting of votes, the Court must be prima facie satisfied on the basis of evidence that there are requirement of re- counting of votes for complete and effectual justice between the parties.



The present petition is at stage of evidence and only examination-in-chief of witness had been done so, this is not a stage where recounting of votes could be ordered. Moreover, as discussed above, it is also main relief of petitioner to recount votes therefore, this relief could not be given to the petitioner at this stage for the reasons discussed above. Therefore, this application of recounting of votes is dismissed.”

21. Thereafter, matter was fixed for rebuttal evidence on 2.12.2024; whereupon present/2nd application for recount and summoning of polling officer in rebuttal evidence, was filed by the respondent no.1 on dated 2.12.2024 (Annexure P-12). Therefore, the present application for recount is not maintainable, being barred by res judicata.

22. Further, the impugned direction for recount is liable to be set aside being patently illegal being without jurisdiction. In ordering the re-counting of votes the Ld. Tribunal has transgressed its jurisdiction as enshrined in Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as "the Act") whereby no such power is vested in the Ld. Court below. Relevant extract of Section 176 (4) (b) of the Act of 1994 is reproduced herein under:

"(4)(b) If, in any case to which [clause (a) or clause (aa)] [Substituted by Haryana Act No. 17 of 2001 w.e.f. 1.5.2000.] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of



each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected :

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine."

23. Thus, as per the above provision, the learned Tribunal can merely, upon scrutiny and computation of votes recorded in favour of each candidate, declare the candidate having the largest number of valid votes as elected. As per the statutory provisions, Ld. Court is required to scrutinize the result, and declare the result; whereas in the instant case a direction has been cast upon the Deputy Commissioner/ Election Officer, Panipat to get the recounting of votes in booth no.69 under his supervision on 07.05.2025 which is per se illegal since no such power vests in the Ld. Tribunal. It is clear from a bare reading of the above provision, that the Tribunal is only vested with the power of scrutinization and computation of the result; and could not have directed any authority to recount the votes especially since the Ld. Tribunal is also required to adjudicate upon the questions of the validity of votes. Moreover, the entire election record has been summoned and is available before the Ld. Tribunal to make such scrutinization upon leading of such evidence.



However, the Ld. Court has breached the statutory mandate while passing the impugned order.

24. Learned Senior Counsel for respondent No.1 has been unable to apprise this Court as to under which provision of law can the respondent No.1 keep seeking recounting or even seek first recount of the ballot; or under what provision of law can such a direction be issued for recount of the ballot. It has been argued by learned Senior Counsel for respondent No.1 that recount has been directed only after the learned Tribunal had satisfied itself that for the proper adjudication of the matter, recount was necessary. It has been argued by learned Senior Counsel for respondent No.1 that the entire evidence stands concluded and that issue-wise findings have already been given by learned Tribunal and trial stands concluded; whereupon, it was found by the learned Tribunal upon examination of the entire leading and material and evidence of the case that recount was necessary for the proper adjudication of the matter.

25. However, the said argument is misconceived, and contrary to the record as vide the present application (Annexure P12), prayer had been made by respondent No.1:-

“Application for permission for summoning the witness no.9 (diet money of the said witness already deposited) in rebuttal evidence as per order of the Hon'ble Court dated 05.07.2024 passed by the predecessor court Sh. Prateek Jain Id. ACJ (S.D.) Panipat, which is kept pending by this Hon'ble Court and further permission to recount the votes from brining record by witness no.9 as per list already submitted in court from EVM



Machine and Ballet Unit machine for proper decision on merits of the case.”

26. The above prayer makes clear that trial is not yet concluded, in fact, even evidence is not yet concluded. Admittedly, findings on the most crucial Issue no.1 have not been given by the Id. Tribunal. As such, above contention of the learned Senior Counsel for respondent no.1, is rejected.

27. Further, in the impugned order the learned Tribunal has held that recount is necessary for decision on issue No.1; and that a ‘Prima Facie’ case has been made out for recount. The said ‘prima facie’ case adverted to by the Id. Tribunal is stated to be made out on the basis of oral statements/testimonies of PW7 Pankaj Patidar (Assistant Returning Officer), and PW8 Brij Pal (Presiding Officer, Booth No.69). However, the record would reveal that the above-cited ostensible ground for directing recount of votes, does not stand scrutiny.

28. Before proceeding, it may first be pointed out that the entire genus of the present dispute stems from a video privately created and shot by Presiding Officer, Brijpal (PW8) from his personal private mobile phone in which certain irregularities were allegedly recorded. The entire basis for challenging the election of the petitioner is this video privately made by Presiding Officer, Brijpal (PW8) from his personal mobile. It was stated by PW8 Brij Pal/ Presiding Officer, Booth no.69 in his evidence/statement (Annexure P-11) before the learned Tribunal that at the time of preparing the manual record, names of candidates were not



written as per the ballot number and had been interchanged, and that he had realised this mistake on checking the video. First and foremost, as per Election Rules/Handbook no mobile phone is allowed in the booth and there is complete ban on videography. In the impugned order (Annexure P-15/at page 213 of the paper book), the learned Tribunal has duly referred to the statements of RW3 and RW4/ Election Agents of the petitioner, to the effect that in compliance of the said rule, no mobile was allowed. However, in flagrant violation of the above said Rule, PW8 Brij Pal/ Presiding Officer, Booth no.69 in his statement (Annexure P-11) has admitted to making a video. More importantly, PW8 has admitted that the video of 02.11.2022, was not deposited in Election Revival/Control Room despite the fact that there was no order of the Returning Officer permitting PW8 to keep the said video with himself; and that the mobile phone/pen drive were a private document. PW8 has further stated in his evidence (Annexure P-11), that he had not brought the said mobile phone on which the alleged video was shot, and that he had further sold the said mobile in 2023. PW7 Pankaj Patidar (RO) in his statement (Annexure P-10), has also admitted the above facts. PW7 has admitted that the video in question was not given to anyone from November 2022 to 2024-25. From the above facts, it would appear that the authenticity of the video sought to be relied upon by the election petitioner in seeking recount of votes, which is the very foundation of the dispute at hand, is not established.



29. Despite the above facts, the said video recording was sought to be produced before the learned Tribunal by way of pen drive (Ex.PW8/A). However, keeping the above factors in mind the learned Tribunal, in the impugned order, has categorically recorded that the said video (pen drive) (Ex.PW8/A) was inadmissible in evidence, as it had not been proved in accordance with law. In this regard, a positive finding has been given by the learned Election Tribunal in Para 43 of the impugned order that: -

“43. In the present case, petitioner has pleaded material fact stating irregularity in the counting of votes. It is the case of petitioner that initially Brijpal, Presiding Officer of Booth No.69, has committed error while recording the votes from EVM to the Form 19 in as much as the votes polled in favour of petitioner has been recorded in the name of respondent no.1 and the votes polled in favour of respondent no.1 have been recorded in favour of Mahavir. Petitioner has examined Brijpal as PW8 and Pankaj Patidar as PW to show the alleged irregularity.No doubt, the pen-drive Ex.PW8/A containing the alleged video recording of counting has not been, proved as per law and is therefore inadmissible in law, but the oral testimony of PW7 Pankaj and PW8 Brijpal is sufficient to make out a prima-facie case in favour of petitioner. Without doubt, the stand of Petitioner had taken a slight change from his pleadings to the extent that act of initial recording of votes by PW8 Brijpal has been termed as 'mistake', though in the petition, the act has been termed as



illegal and the result of hijacking of electoral process by respondent no.1. In the considered opinion of the court, the material fact was wrong recording of votes and not the reason for the same. The argument that PW7 Pankaj and PW8 Brijpal were in collusion with petitioner is not sustainable as in that case respondent no.1 would not have been declared winner initially. Therefore, I have no hesitation in holding that petitioner has made out a prima facie case for recount of votes in booth no.69. I am prima facie satisfied that order for recount of votes is imperatively necessary to decide the dispute and to do complete justice between the parties.

44. In view of the above discussion and on the basis of my findings issue no.2 to 6, Respondent No.8 Deputy Commissioner/ Election Officer, Panipat is directed to get the recounting of votes in booth no.69 for the post of Sarpanch of Gram Panchayat Village Buana Lakhu under his supervision on 07.05.2025. It is made clear here that the candidates would be entitled to take one representative along with them. The Worthy DC, Panipat is directed to notify the candidates about the time and place of recounting. The recounting be videographed. Report containing the result of recounting in booth no.69 is awaited for 09.05.2025 for decision on issue no.1. Copy of this order be sent to Worthy Deputy Commissioner, Panipat for requisite action as per law.”

(emphasis added)



30. The entire case of Respondent No. 1 (Election Petitioner) is that the alleged error in preparation of the election result was discovered after checking the videography whereas the videography has been done on a personal level in the mobile phone and the sanctity of the same is questionable. Thus, the very initiation of the case pleaded by Respondent No. 1 is apparently false rendering the entire version as false.

31. As regards the oral testimony of PW7 and PW8 which the learned Tribunal has opined to be sufficient to make out a prima facie case for recount, the same is also liable to be rejected. Firstly, the impugned order reveals that no reasons have been assigned as to why, on what basis, or even on basis of which statement(s), a case for recount is made out. Nothing has been pinpointed as to on basis of which statement of which witness recount was necessitated. The impugned order therefore indicates total non-application of mind.

32. To the contrary, a perusal of the depositions of PW7 and PW8 when scrutinized wholistically reveal that the same are riddled with material discrepancies that would in no manner justify recounting. These discrepancies have been overlooked and ignored. The relevant extract of deposition PW 7 Pankaj (Annexure P-10), is as follows:

"Question: Whether any agent or candidate gave any written application for recounting after the result which you had prepared vide Ex PW 7/ E Form No. 19?"

Answer: I was not given any written application for recounting. However, as soon as I reached SD Vidya Mandir the presiding officer of booth no. 69 Sh Brij pal ji gave a



written application in which he appraised regarding mistake in performa no. 19.

Question: Whether is correct that on non receipt of written application or objection on Ex Pw 7 / E you had handed over certificate on form no. 21 - B after declaring Sh Kuldeep Singh as winning Sarpanch on booth no. 65 itself under signature and in your handwriting?

Answer: In the village at the polling booth I had not received any written application or complaint therefore after compiling form no. 19 and after agreeing with other PO I had declared Kuldeep Singh Ji as winner in performa no. 21 - B.

Question: Whether it is correct that after declaration of Sarpanch and after issuance of Ex PW7/E, all election record and EVM were packed in different different packets and sealed by the all the PO?

Answer: Yes it is correct that Ballot unit and Control Unit and all documents as per the rules of the election were deposited in election office, all the records were sealed in the village."

33. A perusal of the above falsifies the entire version of events as set out by respondent no.1. In fact, PW 7 had further deposed that "*In view of the ruckus (hungama) Brijpal PO Booth No. 69 had taken this decision himself*" with respect to checking of the result. However, once the election process is over and result is declared and documents are placed in sealed covers, there was no occasion for any such mistake to have been 'discovered' in the first place, much less correct it. PW 8 Brijpal had deposed regarding the sealing of the election documents at the polling booth itself, therefore the result of the election could not have



been changed, or mistake could not have been discovered except without opening the seals which cannot be done. In case the election documents were sealed on the polling booth itself, how was the mistake discovered; and how could such 'mistake' in Form No. 19 and 15 have been corrected without opening the election documents in the sealed cover - thereby destroying the sacrosanct seal of the election documents. It would therefore appear that election record was tampered with or placed without sealing and subsequently changed rendering the entire process invalid. A vital response of PW8 to this effect is as follows:

"Q. Whether Ex.PW7/G has been prepared again after opening the record and seal of sealed covers?"

Ans: This I do not remember."

34. Moreover, the entire case of the Election Petitioner is that ruckus was caused in the village itself demanding change of result whereas it has been stated that the demand for change was made after coming to SD Vidya Mandir Control Room. Furthermore, PW 7 on being shown the PO Diary and election records had stated that *"Those documents that have been shown to me in the PO Diary written by me along with attached documents are not available"*. Hence, material lapses and gaps exist in the entire story which go to the root of the validity of the votes itself. But these aspects have not been considered.

35. Further, the material contradictions between the testimonies of PW 7 and PW 8 could not have been overlooked especially since PW 7 had stated that he had not seen the video of counting;



whereas PW 8 has deposed that such video was sent to PW 7. The relevant extract of deposition of PW8 is reproduced herein under:

“Q. Whether alleged video of Booth No.69 was shown to Pankaj Patidar who was the Incharge of Booth No.65?

Ans: Yes. Because in the Control Room entire Israna Block of Panipat RO Sugar Mill M.D. whose name I do not remember were given oral orders to all the Presiding Officers that all send their video to Presiding Officer of Booth No.65 Pankaj Patidar then we send this video to him. It is wrong that Pankaj Patidar has seen and check your video it is also wrong that Pankaj Patidar told you about your alleged error. It is also wrong that you in connivance with Mohit himself without any evidence prepared false Form Ex.PW7/G and by taking Pankaj Patidar in faith by wrong manner got prepared Ex.PW7/F from him and it is also wrong that Kuldeep Singh got 254 vote at Booth No.69 and Mohit got only 7 votes. It is also wrong that certificate Ex.PW7/J has been given to Mohit on the basis of wrong record by preparing it falsely.”

36. The many discrepancies in the contradictory statements made by PW7 and PW8 may be enumerated in tabular form as follows: -

Pg	PW7 Pankaj Patidar (ARO)	Pg	PW8 Brijpal (RO Booth No.69)
	Objection to mode of proof, photocopies of documents exhibited – to be decided at time of arguments		
Application for Recounting			
126	No application for recounting given at the time of counting, application given to	145	No written objection was received from Mohit at the time of counting



	PW8 after reaching SD Vidya Mandir		
130	Decision for recounting was taken by Brijpal PW8 himself		
136	No instructions for recounting were given		
Sealing of Election Documents			
127	Ballot Unit and Control Unit and all documents were sealed in village	146	Material was sealed in the village itself
129	Prior to depositing documents in SD Vidya Mandir, mistake was found and corrected document were deposited	146	Do not remember whether Form No.15 and 19 were put in sealed cover
130	Sealed documents were not opened	147	No order was given to check videography
			“Q. Whether Form No.15 and Form No.19 were put in envelop by putting them in sealed cover? Ans: This I do not remember.”
			“Q. Whether Ex.PW7/G has been prepared again after opening the record and seal of sealed covers? Ans: This I do not remember.”
		149	“Q. Whether on reaching the Control Room you have compared the alleged Video with the EVM Control Room? Ans: No”
129	Some persons got on in the bus of polling officials to SD Vidya Mandir		
Videography checking by PW7 and Others			
136	Videography was not checked	143	Only oral orders for recording videography
		147	Videography was shown to PW7



37. A bare perusal of the above reveals that there are numerous material discrepancies in the testimonies of PW 7 and PW 8. Yet, the said statements have been made the basis for the order of recounting.

38. Furthermore, as already mentioned above, the very basis for the recount, which is the video produced by PW8, is not sacrosanct. However, learned Tribunal has failed to properly appreciate this aspect of the matter. Authenticity of the pen drive containing the alleged video (Ex.PW8/A) placed on record by Brijpal, has not been established. It is pertinent to mention that the Issue no. 2A regarding the validity of votes has not been thoroughly examined and, in case, the election documents itself were tampered with, there could not have been any order for recounting of the votes. In this regard, the finding of the learned Tribunal in respect of relevant Issue no.2A (at pages 219 and 220 of the paper book), makes interesting reading. In respect of the Issue no.2A *“Whether the election documents and EVMs were forged and tampered with after declaration of result? OPR (Respondent no.1)”*, the learned Tribunal has held that *“No doubt, petitioner Mohit has deposed in his cross-examination that he along with his father had gone to the Control Room in the bus. However, the fact that petitioner and his father had went into the bus meant for transporting the officials to the Control Room does not by itself prove that the EVM were tampered with.”* The learned Tribunal has failed to appreciate that the entire controversy in the



instant case rests upon the discovery of the alleged error in the election result which is alleged to have been found suo moto by the Presiding Officer of Booth No. 69 in the absence of any application for recounting. The testimony of PW 7 and PW 8 clearly shows that some election record was not sealed on the polling booths and brought loosely to the control room because of which possibility of tampering cannot be ruled out.

39. Last but not the least, the Ld. Court has ignored that relief with respect to recounting of votes has been pleaded in the election petition by Respondent No. 1 (Election Petitioner) as a final relief. It is trite in law that final relief cannot be granted in the form of interim. Moreover, an application for recounting of votes was moved by Respondent No. 1/ Election Petitioner which was dismissed vide order dated 05.07.2024. Once the application has been dismissed, a similar application could not have been made again at a subsequent stage.

40. It is also to be appreciated that Recount cannot be ordered in a mechanical manner. Recount can be resorted to only in rare cases where a strong case is made out, after giving due reasons upon application of mind. In holding as above, I draw support from judgment of the Hon'ble Supreme Court in **"Udey Chand Vs. Surat Singh & Another"** (2009) 10 SCC 170, wherein it is held as under:-

"9. Before adverting to the merits of the issue raised by the parties with reference to the statutory provisions, it would be appropriate to bear in mind the salutary principle laid down in the election law that since an order for inspection and re-



count of the ballot papers affects the secrecy of ballot, such an order cannot be made as a matter of course. Undoubtedly, in the entire election process, the secrecy of ballot is sacrosanct and inviolable except where strong prima facie circumstances to suspect the purity, propriety and legality in the counting are made out. The importance of maintenance of secrecy of ballot papers and the circumstances under which that secrecy can be breached, has been considered by this Court in several cases. It would be trite to state that before an Election Tribunal can permit scrutiny of ballot papers and order re-count, two basic requirements viz.:

(i) the election petition seeking re-count of the ballot papers must contain an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded, and

(ii) on the basis of evidence adduced in support of the allegations, the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary, are satisfied.

XXX XXX XXX

17. It is no doubt true that the legislature in its wisdom has not incorporated in clause (b) the expression "on the holding of such inquiry" it appears in clause (a), but bearing in mind the importance and the sanctity of the secrecy of a ballot, in our considered opinion, it cannot be the intention of the legislature that a bald allegation of irregularity in the counting process would ipso facto warrant a re-count. Such an interpretation of the provision, in our view, would not only tantamount to automatic conversion of a petition under Section 176(1) of the Act into an order for re-counting, it



would be destructive of the settled principle of secrecy of poll, as also violative of letter and spirit of Section 183 of the Act, which mandates every officer, agent, etc. who performs duty in connection with the recording or counting of votes, to maintain the secrecy of votes...We have no hesitation in holding that a petition for re-count as contemplated under clause (b) of Section 176(4) of the Act must contain adequate statement of material facts on which the election petitioner relies in support of his allegation(s) and it must also be supported by some contemporaneous evidence to show irregularity or illegality in the counting. On this basic material, which affords the basis for the allegations in the petition and the response of the opposite party thereon, the Tribunal is required to record its prima facie satisfaction that in order to decide the issue raised in the petition and in order to do complete justice between the parties the "scrutiny and computation of the votes" recorded in favour of each candidate is necessary. The need to record reasons in support of the satisfaction can hardly be overemphasised because reasons are the soul of the order/judgment. Therefore, we hold that though in an election petition seeking an order under Section 176(4)(b) of the Act, it may not be necessary for the court to hold a regular enquiry as postulated under clause (a) of Section 176(4) of the Act but the court is obliged to apply its mind to the a material facts, disclosed in the petition, on which the allegations of irregularity or illegality are founded, along with some contemporaneous evidence, which would depend on the facts and circumstances of each case. An order for re-count on the basis of bare allegations in the election petition would not be a proper exercise of jurisdiction under the provision."



41. In the present case, contrary to the above mandate of the Hon'ble Supreme Court, there are no specific statements and/or material facts on the basis of which recount could have been ordered. In fact, the pleadings are vague and contradictory.

42. Reliance may be placed upon another judgment of the Hon'ble Supreme Court in **Vijay Bahadur v. Sunil Kumar, (SC) : Law Finder Doc Id # 2702643** relevant part of which is as under:-

"13. Since the question involved in this appeal appertains to recount of votes, let us consider the law on this aspect - as has been laid down through various pronouncements of this Court, in the context of various legislations.

*13.1 A Constitution Bench of this Court in **Hussain KamilKidwai (supra)**, in the context of the 1962 Lok Sabha elections to the Barabanki Constituency, wherein the appellant before this Court had been declared elected, and the respondent who was one of the contestants in the election, was aggrieved and his grievance was heard and eventually allowed by the High Court, observed that an order for inspection of ballot papers is not to be made as a matter of course and it is only upon the fulfillment of certain conditions that the same can be permitted. The relevant extract is :-*

"6. 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. But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

13.2 In *Vadivelu v. Sundaram, (2000) 8 SCC 355*, a three-Judge Bench of this Court while concerned with a dispute regarding the election for the post of President of Vannavalkudi Village Panchayat, Pudukkottal District in Tamil Nadu, which was governed by the Tamil Nadu Panchayats (Elections) Rules 1995, held :

"16...this Court has consistently taken the view that recount of votes could be ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of the above allegation, it can order re-count of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if



it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to re-count of votes under such circumstances to do justice between the parties."

13.3 Sarkaria J., writing for the Court in **Suresh Prasad Yadav v. Jai Prakash Mishra, (1975) 4 SCC 822**, recorded three scenarios when recount would be justified. The relevant extract of the judgment is as under:

"6. The Court would be justified in ordering a recount of the ballot papers only where:

(1) the election-petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded;

(2) on the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) the court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties."

13.4 In **Beli Ram Bhalai v. Behari Lal Khachi, (1975) 4 SCC 417**, wherein the subject matter of dispute was the election of the respondent therein from the '6-Kumarsain Assembly Constituency' of the State of Himachal Pradesh, and so, was obviously governed by the RPA, considered a number of precedents including *Hussain Kamil Kidwai (supra)*, the Court observed :



"45. ... Since an order for a re-count touches upon the secrecy of the ballot papers, it should not be made lightly or as a matter of course. Although no cast-iron rule of universal application can be or has been laid down, yet from a beadroll of the decisions of this Court, two broad guidelines are discernible: that the court would be justified in ordering a re-count or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and (ii) the Court/Tribunal trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties..."

*13.5. The law mandates that secrecy of the ballot should be maintained. In **Satyanarain Dudhani v. Uday Kumar Singh, 1993 Supp (2) SCC 82**, the Court held:*

"10. It is thus obvious that neither during the counting nor on the completion of the counting there was any valid ground available for the recount of the ballot papers. A cryptic application claiming recount was made by the petitioner-respondent before the Returning Officer. No details of any kind were given in the said application. Not even a single instance showing any irregularity or illegality in the counting was brought to the notice of the Returning Officer. We are of the view when there was no contemporaneous evidence to show any irregularity or illegality in the counting ordinarily, it would not be proper to order recount on the basis of bare allegations in the election



petition. We have been taken through the pleadings in the election petition. We are satisfied that the grounds urged in the election petition do not justify for ordering recount and allowing inspection of the ballot papers. It is settled proposition of law that the secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order of recount cannot be granted as a matter of course. The secrecy of the ballot papers has to be maintained and only when the High Court is satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered.”

13.6. In **Udey Chand v. Surat Singh, (2009) 10 SCC 170**, this Court while entertaining an appeal by special leave, from a judgment and order of the High Court of Punjab and Haryana wherein the order of the Election Tribunal directing recount of the votes cast in the election for the post of Sarpanch, Gram Panchayat, Village Badshahpur, in a petition filed under Section 176 of the Haryana Panchayat Raj Act, 1994, observed:-

"12. The importance of maintenance of secrecy of ballot papers and the circumstances under which that secrecy can be breached, has been considered by this Court in several cases. It would be trite to state that before an Election Tribunal can permit scrutiny of ballot papers and order re-count, two basic requirements viz.: (i) the election petition seeking re-count of the ballot papers must contain an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded, and



(ii) on the basis of evidence adduced in support of the allegations, the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary, are satisfied."

43. Reliance may also be placed upon judgment of this Court in **Sadhu Singh v. Sub Divisional Magistrate-cum-Presiding Officer, and Others (Punjab and Haryana) : Law Finder Doc Id # 2032823** relevant part of which is as under:-

"10. A perusal of the impugned order reveals that respondent No.1 has extensively reproduced the statements recorded in evidence of the parties to the lis. However, there is no consideration of the merits or de-merits of these statements by respondent No.1. The impugned order does not even mention the grounds of challenge to the election of the petitioner as Sarpanch. The very brief facts are mentioned in the opening paragraph of the impugned order, followed by the statements of Ravinder Singh (present respondent No.4), Sadhu Singh (present petitioner) and Kamaljit Singh (present respondent No.5). Thereafter respondent No.1 proceeded to order the recount by holding as under :

"After perusing the documents on record and after hearing both the parties. After perusing the above mentioned facts the petition filed by the petitioner is accepted. For recounting of votes/ballot papers casted in the Village Singpura for the post of Sarpanch the committee of the following officials has been constituted:

1) Sh. Puneet Bansal, Naib Tehsildar, Gharaun



2) Executive Officer, Municipal Council Kharar

The above committee under their supervision and in the presence of both the parties will conduct recounting of votes in the Court of undersigned and Block Development and Panchayat Officer, Kharar will assist the above committee but the date of recounting will be declared later."

44. Reference may be made to another judgment of this Court in **"Mohammad Islam Vs. Aas Mohammad & Others"** CR-1482-2024 decided on 30.04.2024, wherein it is held that: -

"16. Having viewed the impugned order in the light of statement of material facts on which petition has been based and the principles enumerated in the judicial precedents, it is held that learned Tribunal lost sight of the parameters to be applied, while ordering for recounting of the votes. Perusal of the impugned order would show that same was passed on the basis of the pleadings of the parties. The impugned order even does not indicate that any material much less the affidavits of the parties by way of their evidence were taken into account, before ordering recounting of votes. The impugned order does not indicate any prima facie satisfaction was recorded by the learned Tribunal, before ordering the recount of votes. It does not provide that learned Tribunal made any limited inquiry based on any material before passing the order. It is settled position of law that justification for an order of recount of votes cannot be derived from the hindsight and by result of recount of votes but from the material placed by an election-petitioner on the threshold for recount of the votes. The right of a defeated candidate to assail the validity of an election result and seeking recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy. Unless the affected candidate is able to substantiate by means of some evidence that a prima facie case of recounting of votes is made out, the learned Tribunal, in the interest of justice, should not order recount of votes."



45. In view of the factual and legal position as noted above, the present petition is **allowed**. The impugned order dated 22.04.2025 (Annexure P-15) passed by the Election Tribunal, Panipat, directing recount of votes, is set aside.

46. Pending application(s) if any also stand(s) disposed of.

01.07.2025

Sunena

(Nidhi Gupta)

Judge

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