

Before Swatanter Kumar, J.

DARSHAN SINGH,—*Petitioner*

versus

DEPUTY COMMISSIONER-CUM-PRESIDING OFFICER
ELECTION TRIBUNAL & OTHERS,—*Respondents*

C.R. No. 446 of 2000

2nd March, 2000

Constitution of India, 1950-Art. 227—Punjab Election Commission Act, 1994—S.s. 89 & 100—Petitioner declared elected Sarpanch by margin of one vote over respondent No. 2—Respondent challenging the election before the Tribunal—Allegations of corrupt practices against elected candidate—Tribunal passing the order of re-count—Challenge thereto—Non-disposal of issue of maintainability of the election petition prior to passing the order of recount causing no prejudice to the petitioner.—Order of recount held to be justified—Election Tribunal has to do the recount—Cannot delegate this function to third party.

Held that, the Court is otherwise satisfied that on the pleadings of the parties, evidence brought on record and the attendant circumstances the order of recount is justified. The Court would be more inclined to pass such order if it can bring an end and finality to the on-going litigation.

(Para 15)

Further held that, the power vested in the Tribunal cannot be delegated. The power to order recount is not a power which can be delegated by the Tribunal to a third person. Directing recount of votes is a serious order and it has to be passed and compliance recorded by due application of mind by the concerned Tribunal. The statutory provisions neither prescribe nor justify implied delegation or the principle of necessity or otherwise, if the counting of votes is irregular or defective and the order of recounting is passed by the Tribunal it could finally result in setting aside the election of the elected candidate. Thus, recount has to be done by the Tribunal itself. This revision petition is dismissed. However, with one variation in the impugned order that the presiding Officer, Election Tribunal, Bathinda shall take the recount himself and not to delegate the said power to any other authority whatsoever.

(Paras 17 & 18)

J.R. Mittal, Sr. Advocate with K.K. Garg, Advocate, *for the petitioner*

G.S. Grewal, Sr. Advocate with T.P.S. Mann, Advocate, *for respondent No. 2*

JUDGMENT

Swatanter Kumar, J.

(1) The petitioner—Darshan Singh—has challenged in this petition under Article 227 of the Constitution of India the order dated 18th January, 2000, Annexure p-3 to the petition, passed by the Deputy Commissioner-cum-Presiding officer, Election Tribunal, Bathinda, (hereinafter referred to as the Tribunal) ordering recount of the votes.

(2) Learned counsel appearing for the petitioner has impugned the said order mainly on the following grounds :—

- (a) the order of recount is not based on substantial pleading and material evidence;
- (b) the grounds pleaded by the election-petitioner before the Tribunal are so inter-mingled with other grounds that order of recount could not be passed independent of the decision of other grounds; and
- (c) the Tribunal ought to have decided the issue of maintainability of the petition before passing the impugned order.

(3) On the other hand, learned counsel appearing for the respondents has argued that the impugned order is a valid order, in consonance with the settled principles of law and has been passed within four corners of the statutory provisions and with definite material in support thereof on the record.

(4) In order to appreciate the rival contentions, reference to the necessary facts would be appropriate.

(5) Election to the Sarpanch of Gram Panchayat village Bangi Rughu was held on 21st June, 1998. Darshan Singh, Harinder Singh and Sarbjit Singh contested the said election. Darshan Singh was declared elected in the said election by defeating respondents Nos. 2 and 3. Darshan Singh was declared elected by margin of one vote over Harinder Singh. Harinder Singh filed an election petition before the Tribunal challenging the election of Darshan Singh. The election

petition was filed with a prayer that election petition be accepted and the election of Darshan Singh be set aside and the petitioner be declared as elected Sarpanch in the said election. Various grounds of corrupt practices as well for recount of votes were taken in the said petition. It was stated that Darshan Singh had brought some fictitious persons to vote in his favour and the Polling Officer was interested in Darshan Singh. They had drink and meals together at night. Whenever an objection was raised to any irregularity in process of election the same was oughtrightly rejected by the Presiding Officer. Great emphasis was placed on the irregularities committed in counting of votes. At this stage, it may be relevant to refer to certain relevant paragraphs of the election petition.

- “6. That respondent No. 3 was highly interested in respondent No. 1 as he had old relations with respondent No. 1 and Polling Officers and Presiding Officer had reached village in the evening of 20th June, 1998 and had stayed in the school. But at night all the respondents No. 3 to 7 had taken meals and drinks at the residence of respondent No. 1 and that is why, respondents No. 3 to 7 had been oughtrightly helping respondent No. 1. Whenever any objection had been raised by the petitioner, the same had been turned down by respondent No. 3 without assigning any cogent reasons.
7. That after the polling was completed, the respondent No. 3 had directed all candidates and agents of the candidates for the post of Panch to go out of the Polling Station and only Darshan Singh, Sarabjit Singh and Paramjit Singh s/o Jagdev Singh who was agent of petitioner were allowed to remain inside the room where votes were to be counted. Respondent No. 3 directed Darshan Singh, Sarabjit Singh and Paramjit Singh to sit on one side of the room and at the time of counting of the votes. respondents Nos. 3 to 7 did not allow Sarabjit Singh or Paramjit Singh to scrutinise the votes in order to ascertain marks on the ballot papers. The respondent No. 3 had also not shown the rejected votes/ballot papers to the agents. Respondents Nos. 3 to 7 had illegally rejected 39 votes without allowing agent of the petitioner to scrutinise the marks on those votes. So votes of the petitioner had been illegally rejected by the respondents Nos. 3 to 7 in connivance with respondent No.1. At the time of counting of votes, the respondents Nos. 3 to 7 had formed bundles of 50 votes each of different candidates. The counting was almost complete at about 9.15 .P.M and petitioner was

winning by about 49 votes. But at about 9.15 P.M. abruptly, there was failure of electric supply and in the darkness, respondent No. 3 in order to favour respondent No. 1 and in his connivance shifted one bundle of 50 votes from the bundles of petitioner to the bundle of respondent No. 1 and then immediately respondent No. 3 declared respondent No. 1 as elected Sarpanch by a margin of one vote. Paramjit Singh agent of the petitioner in presence of Sarabjit Singh and Darshan Singh had raised strong objection in this regard. The agent of the petitioner also asked respondent No. 3 to let him see the nishana/marks on ballot papers. But respondent No. 3 did not allow him to do so rather by counting bundles and some loose votes, declared respondent No. 1 to be elected candidate for the post of Sarpanch by a margin of only one vote. The agent of the petitioner had moved application to respondent No.3 for recounting of votes, but respondent No. 3 illegally and against facts torned the abovesaid application and refused to recount the votes. No signatures of Paramjit Singh had been obtained by respondents No. 3 to 7. There were total 1018 votes in the village, out of which 39 votes had been rejected. 466 votes have been shown to have been polled in favour of Harinder Singh petitioner whereas 467 votes have been shown to have been polled in favour of Darshan Singh respondent Nos. 1 and 5 votes have been shown to have been polled in favour of Sarabjit Singh respondent No. 2, whereas actually, much more votes had been polled in favour of Harinder Singh petitioner, but due to the abovesaid illegal act of respondent No. 3 in connivance with respondent No. 1, the respondent No. 1 has been illegally shown to be a winning candidate by a margin of only one vote.

8. That the abovesaid act of connivance by respondent No. 1 with respondent No. 3 and to get himself declared elected by making irregularities at the time of counting of votes, amounts to corrupt practices. Respondents Nos. 4 to 7 too, indulged in corrupt practices at the instance and in connivance with respondents Nos. 1 and 3, which resolution declaration of respondent No. 1 as elected Sarpanch of V. Bangi Raghu. The above said illegal acts of the respondents have materially affected the result of the election and the rights of the petitioner has been greatly prejudiced due to illegal and *malafide* intention of respondents Nos. 1 and 3 to 7.

9. that recounting of votes is very much necessary in this case because due to above referred corrupt practices and wrong counting of votes by respondent No. 3 in connivance with respondent No. 1, has materially affected result of the election.”

(6) Respondent Darshan Singh (petitioner herein) had filed the reply and had taken an objection that election petition is not maintainable as the provisions of Rules 51 and 52 framed under Punjab Election Commission Act, 1994 (hereinafter referred to as the Act) have not been complied with. It was stated that requisite copy of the petition and its enclosures have not been furnished. The affidavit has not been signed and full particulars of the alleged corrupt practices have not been furnished, as such, the petition was liable to be dismissed. In addition thereto, averments made in reply to corresponding paragraphs 6 to 9 read as under :—

“6. Para 6 of the election petition is wrong, false, mischievous, derogatory and bundle of lies and hence vehemently denied. The allegations are vague and afterthought. If anything has happened on night of 20th June, 1998, then the petitioner must have approached the concerned authorities, district administration or the Election Commission. It is specifically denied that the polling party had meals or drinks at the resident of the answering respondent. It is also specified denied that respondents Nos. 3 to 7 had been helping respondent No. 1 ought rightly, the petitioner has cunningly, cleverly used the word ‘drinks’ instead of liquor. Respondents No. 3 to 7 are all Government officials having good record and the allegations levelled against them are false, made out of frustration as the petitioner lost election by one vote.

7 Para 7 of the election petition is absolutely wrong, false, mischievous, hence vehemently denied. The counting was made quite in accordance with law and rules. The votes found invalid were rightly declared as ‘Rejected’. The allegation of connivance of answering respondent No. 1 with respondents No. 3 to 7 are quite false, frivolous, levelled out of frustration. The allegation of failure of electric supply is also of vague and routine nature. This allegation is levelled by every person who lost elections. The allegation of shifting of bundle of 50 votes to the respondent No. 1 is quite false. The counting was fair and as per rules and all the cancelled/rejected votes were

scrutinised by all concerned. The answering respondent No. 1 secured one vote more than the petitioner and so he is legally declared winning candidate for Sarpanch.

8. Para 8 is wrong, false, frivolous, bundle of lies, mischievous and is vehemently denied. Detailed reply has been given in foregoing paras.

9. Para 9 is wrong and hence denied.

(7) In view of the above pleadings of the facts, evidence was recorded. PW. 1 Paramjit Singh, PW. 2 Harnek Singh, PW. 3 Harinder Singh and PW. 4 Sarabjit Singh, specifically stated with regard to the various corrupt practices and irregularities committed during the course of counting. They clearly stated that during the counting of votes they had not been permitted to see the votes and the mark on the votes. Rejection of the votes was not done properly. Complaint with regard to casting of bogus votes was also made to the Block Development and Panchayat Officer and Deputy Superintendent of Police, Talwandi. 39 votes were rejected incorrectly. It was stated that election-petitioner was winning by 49 votes when the light went off at about 9.15 O'clock. There was bungling in the bundles and they mixed 50 votes to the other side and finally, he was declared to be losing by one vote.

(8) It is not relevant to discuss in great detail the other averments of these witnesses in regard to other aspects of the matter which does not arise for determination before this Court in revision petition. The Junior Engineer, who appeared in the witness box, clearly stated that he had received a complaint that light went off in that village. Of course, some doubts were sought to be created by the learned counsel for the petitioner by arguing that the statement does not give definite timing and the particulars of the village, where the light went off. The Court has to see the cumulative effect of the entire evidence.

(9) The Presiding Officer himself appeared as RW. 3 and stated that bundle of 50-50 votes were made of each candidate. 39 votes were rejected. Sarabjit Singh secured 5 votes. Harinder Singh secured 466 votes and Darshan Singh secured 467 votes. Resultantly, Darshan Singh had won by one vote. Some interesting questions were put to this witness, who in his cross-examination answered them in a manner, which would clearly indicate that light went off and alternative arrangement for light was made. Though he denied the suggestion that light went off. At this stage, it will be relevant to

refer certain part of the cross-examination of this witness, which reads as under :—

“It is also wrong to suggest that I have openly supported him at the time of polling. I do not know from where gas lamp, candles and batteries were brought. Volunterly stated that some polling agent was told for it but I do not know his name. It is wrong that at the time of polling I had been favouring Darshan Singh. It is wrong to suggest I have not considered the objections raised by Harinder Singh and his agents. It is also wrong to suggest that the bogus votes which were brought by Darshan Singh were allowed to be polled in order to favour Darshan Singh.

It is wrong to suggest that about 8.30 O'clock light had gone and at that time Harinder Singh was winning by almost 49 votes. It is also wrong to suggest that taking benefit of the darkness I have shifted one boundle of Harinder Singh votes to Darshan Singh. It is also wrong to suggest that when light came I counted the bundles and loose votes in haste and declared Darshan Singh elected by one vote. It is wrong to suggest that Paramjit Singh given me an application for recounting and I tore the same it and did not take any action. As per the rules the signatures of the candidate are taken on result but if anybody refuse to sign then we write down refused on it. It is correct that the signatures of Harinder Singh or his agent Paramjit Singh are not there on the result. Whereas the signatures of other candidates are there.”

(10) The above statement of the Presiding Officer read with the documents on record and particularly, the statement of the petitioner, clearly creates a doubt that the Presiding Officer has not stated the correct facts before the learned Tribunal.

(11) The power and jurisdiction of the Tribunal to pass such order can hardly be questioned. In fact, it is commonly conceded position that in view of the principle enunciated by the Hon'ble Supreme Court of India in the case of *Shri Satyanarain Dudhani Versus Uday Kumar Singh and others* (1) such power is vested in the Tribunal. The scope of such power was considered in some elaboration by this Court in the recent judgement passed by this Court in the case of *Gurtej Singh Versus Darbara Singh and others*,

(1) A.I.R. 1993 Supreme Court 367

Civil Revision No. 39 of 2000, decided on 3rd Feb., 2000 where the Court held as under :—

“The specific provisions of the Act and the rules framed there-under vest, undoubtedly, a power in the Tribunal to direct re-count of the votes. The fate of a free and fair election would ultimately depend upon proper and unimpeachable process of counting and adherence to the provisions of the Act in that regard. The mandate contained in Section 66 of the Act for counting of votes in presence of the contesting candidate or his agent under the supervision and direction of the returning officer is indicative of the legislative intent to make counting of votes beyond any reasonable suspicion. A definite obligation has been placed on the presiding officer that when he rejects a ballot paper, he has to record rejection on the ballot paper while giving in brief the grounds of such rejection. This further indicates the protection provided to enhance the sanctity of a vote or the protection available to a candidate against wrongful rejection of the votes polled in his or her favour. The proper result of an election is obviously dependent, amongst others, on the correct unbiased counting of votes, as non-adherence thereto can materially tilt and affect the fate of the election, which may otherwise, might have been a fair election. Once the Legislature has vested power in the Tribunal to direct recount of votes, then it is primary for the Tribunal to consider the facts and circumstances of the case and where-ever the ingredients specified in the law governing the subject are specified the Tribunal would be well within its jurisdiction to order recount of votes.

Admittedly, there is no provision in the Act or the Rules framed there-under which would provide a clear indication and the circumstances in which the Tribunal can direct recount of votes. The Court would have to depend upon the general circumstances enunciated for taking a decision in this regard on the alike statutes.

In Clause (iii) of sub-section (1) of Section 89, a specific ground had been provided for declaring the election to be void if there is improper reception, refusal or rejection of any vote or the reception of any vote which is void. The election of returned candidate in these circumstances, would be declared to be void. Read with clause (d) of Rule 33 *ibid* there is greater

importance of this ground if the result of election is materially affected. After having adjudicated upon with regard to the grounds under Sections 88 or 89 a power is vested in the Tribunal for declaring the petitioner or any other candidate to have been duly elected. A complete procedural code with effective powers have been provided in the Act and the Rules framed there-under on the basis of which the Tribunal is required to exercise its jurisdiction. To aid to the powers of the Tribunal and the procedure prescribed under the Act and the Rules, Section 81 of Punjab State Election Commission Act brings the provisions of the Code of Civil Procedure for trial of election petition and further the proper and fair adjudication of the disputes arising in an election petition.

In view of the pleadings and the documentary and oral evidence produced by the election petitioner- respondent herein, a definite case has been made out casting a shadow on the entire process of counting of votes. Even if much importance is not attached to the averments in relation to other allegations in the petition, violation of the provisions of Rule 33 by the presiding officer per se would be a ground for ordering recounting of the votes. Despite the fact that a definite ground has been taken and it was so stated in the evidence, presiding officer of the relevant booth Shri Hardev Singh, has nowhere mentioned in his statement that he had rejected 72 votes upon compliance of the said provisions. The Court cannot be stated to have fallen in error in coming to the conclusion that the votes have been improperly rejected. Compliance to the statutory provisions of Rule 33 would be a condition precedent to rejection of the votes and non-adherence to the prescribed procedure would render the action of the presiding officer invalid and improper.

No doubt the provisions of Section 83 of the Act are indication of secrecy of voting which ought not to be infringed, but this provision is obviously sub-servient to the primary fundamental rule of the election that its process be free and fair. The Hon'ble Supreme Court of India in the case of *A. Neelalohithadasan Nadar Versus George Mascrene and others* Supp (2) Supreme Court Cases 619 discussed this principle at some length and held as under :—

“The existence of the principle of “secrecy of ballot” cannot be denied. It undoubtedly is an indispensable adjunct of free and

fair elections. The Act statutorily assures a voter that he would not be compelled by any authority to disclose as to for whom he has voted, so that he may vote without fear or favour and free from any apprehension of its disclosure against his will from his own lips. But this right of the voter is not absolute. It must yield to the principle of "purity of election" in larger public interest."

(12) On the application of the above settled Principle of law, pleadings and evidence on record, I have no hesitation in holding that the learned Tribunal had sufficient material before it to pass the order of re-count. The other argument raised by the learned counsel for the petitioner that grounds were so inter-mingled that the learned Tribunal ought to have decided the maintainability of the election petition prior to passing the order of re-count is again mis-conceived. Learned Tribunal framed as many as 5 issues and they read as under :—

1. Whether election of respondent No. 1 as Sarpanch is liable to be set aside on the grounds mentioned in the petition ? OPP.
2. Whether counting was unfair and improper ? if so whether recounting is required to be done ? OPP
3. Whether the election petition is not maintainable and liable to be dismissed as it has been filled without complying with the mandatory requirement of law ? OPR.
4. Whether the election petition is bad as it does not reveal full particulars of corrupt practices and material irregularities ? OPR.
5. Relief.

(13) As is apparent from the above issues and the impugned order, learned Judge has kept pending all the other issues for final decision and has passed the present order in relation to issue No. 2. Issue No. 1 was never pressed by the petitioner in this petition to be treated as preliminary issue and the entire evidence of the petition was recorded on all issues. This argument further loses all its emphasis and importance, in view of the statement made by the learned counsel for the election-petitioner before the Tribunal that no other ground is pressed and the decision of the re-count would dispose of the petition itself. Issue of maintainability of the petition would obviously relate primarily to corrupt practices and other grounds taken by the election

petitioner. In fact, learned counsel appearing for the petitioner has not been able to demonstrate as to which is the violation of the statutory provisions or rules which on the bare reading of the petition would result in its dismissal for non-compliance of such provisions. This issue, in any case, has still to be answered by the learned Tribunal, while passing the final order. Thus, no prejudice, in any case, has been caused by non-disposal of this issue prior to the passing of the order of re-disposal of this issue prior to the passing of the order of re-count.

(14) It is one thing to say that the corrupt practices mentioned in the petition and intimacy of the presiding officer with the candidate are grounds for setting aside the election, while it is another thing that these facts may be read as relevant facts for justifying the order of re-count without considering them as independent grounds of corrupt practices. A relevant fact may be proved and read in evidence in context of a principal ground but still may not justify itself as a ground for setting aside the election. All these facts may be relevant facts to prove and set aside the principal ground provided under section 89 of the act.

(15) The Court is otherwise satisfied that on the pleadings of the parties, evidence brought on record and the attendant circumstances the order of re-count is justified. The Court would be more inclined to pass such order if it can bring an end and finality to the ongoing litigation. In the present case, the statement has already been made by the respondent herein that he gives up all other grounds except the ground of re-count. In Case of *Gurtej Singh* (Supra) the Court had also dealt with in regard to this aspect of the matter and held as under :—

“Applying the above said settled principles to the facts of the present case the Hon’ble apex Court has clearly enunciated the principle that to do complete and effectual justice between the parties where the Tribunal or Court is satisfied that making an order of re-count would be imperatively necessary, the Court should pass such an order. I have already discussed that there have been definite pleadings and the evidence in support thereof to justify the order of re-count. *Further more, the learned counsel for the petitioner has specifically stated that this recount would put an end to this litigation and would help in its expeditious disposal because he would not press any other grounds in the event of recounting being not favourable to the election petitioner.* In other words, to do finally complete

justice between the parties and to avoid un-necessary prolongation of this petition the order of recount is an effective and expeditious solution to the election petition.

It is also a settled principle of law that where a statutory provision provides for things to be done in a particular way then things must be done in that manner alone or not. Mandate of Rule 33 places an obligation upon the presiding officer to reject a ballot paper in writing and for reasons to be recorded therein. Breach thereof would entitle the election petitioner to entitlement of the benefit for the same, if any accrues in his favour. There is pleadings and evidence with regard to such improper rejection and the learned Tribunal can only verify this fact by seeing the ballot paper and recount thereof. In the case of *A. Neelalohithadasan Nadar* (supra), the Hon'ble Supreme Court, after considering its judgment in the case of *N. Narayanan* (supra) itself held that order of inspection and recount passed by the High Court, in consonance with the provisions of law for *speedy trial and conclusion thereof was proper*.

(16) This Court has to keep in mind the prescribed limits of its revisional jurisdiction. In a revision, the order passed should be based either on no evidence or should be palpably erroneous to justify interference in exercise of its revisional jurisdiction. The final order which has to be passed by the Court upon merit of the case ultimately is appealable under section 100 of the Act.

(17) It is a settled principle of law that the power vested in the Tribunal cannot be delegated. The power to order re-count is not a power which can be delegated by the Tribunal to a 3rd person. Directing re-count of votes is a serious order and it has to be passed and compliance recorded by due application of mind by the concerned Tribunal. The statutory provisions neither prescribe nor justify implied delegation or the principle of necessity or otherwise, if the counting of votes is irregular or defective and the order of recounting is passed by the Tribunal it could finally result in setting aside the election of the elected candidate. Thus, re-count has to be done by the Tribunal itself. It places onerous responsibility upon the Tribunal and it must and has to satisfy with regard to valid rejection of votes or otherwise where such a ground is pleaded and due evidence is led in support thereof. such opinion is that of the authority concerned and none else. For this part of the impugned order has to be set aside. The learned Tribunal has fallen in error of jurisdiction in ordering recount of votes to be taken up by Additional Deputy

Darshan Singh v. Deputy Commissioner-cum-Presiding Officer 235
Election Tribunal and another (Swatanter Kumar, J.)

Commissioner, Bathinda with the help of such other person or officer as he may deem fit and proper and for submission of the report to the Tribunal.

(18) Resultantly, this revision petition is dismissed. However, with one variation in the impugned order that the Presiding Officer, Election Tribunal, Bathinda, shall take the recount himself and not to delegate the said power to any other authority whatsoever,

S.C.K.