

Mander Singh Vs. Mangal Singh

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Court : Punjab and Haryana

Decided On : Aug-28-2000

Reported in : (2000)126PLR835

Judge : M.L. Singhal, J.

Acts : [Punjab Panchayati Raj Act, 1994](#)

Appeal No. : Civil Revision No. 1965 of 2000

Appellant : Mander Singh

Respondent : Mangal Singh

Advocate for Def. : G.S. Kaura, Adv.

Advocate for Pet/Ap. : R.K. Battas and; Munish Jolly, Advs.

Disposition : Petition dismissed

Judgement :

M.L. Singhal, J.

1. This is petition filed under Article 227 of the Constitution of India by Mander Singh against Mangal Singh seeking quashing of the order dated 9.5.2000 passed by the Presiding Officer, Election Tribunal, Moga in election petition No. 13 of 16.7.1998 titled Mangal Singh v. Mander Singh pending before him whereby he

has ordered recount of votes polled at election to the office of Sarpanch of Gram Panchayat Mahla Khurd. It is alleged in this revision by Mander Singh that he was elected on 21.6.1998 for the office of Sarpanch of Gram Panchayat, Mahla Khurd. Mangal Singh challenged his election through election petition. In the election petition, he (Mangal Singh) examined three witnesses. Their cross-examination was deferred. Out of these witnesses, Sohan Singh, Chowkidar appeared and was cross-examination. No other witness ever came present for cross-examination. Mander Singh along-with his counsel appeared on every date fixed in the election petition. Remaining witnesses never appeared for their cross-examination. Election Tribunal has held him (Mander Singh) responsible for not cross-examining the witnesses of the election petitioner, though the shoe is on the other leg. Election petitioner did not produce his witnesses so that they could be cross-examined. Election Tribunal could close evidence of the election petitioner. Election Tribunal ordered recount for no sufficient reason. Recount was ordered merely because there is small margin of victory i.e. of four votes. At the time of counting of votes, 626 votes were found in the kitty of Mander Singh while 622 votes were found in the kitty of Mangal Singh. It is alleged that the election petition was filed on the ground of corrupt practices. None of the grounds regarding corrupt practice was pressed by the election petitioner. It is further alleged that recount was ordered simply to ensure what really was the comparative position of the candidate. It is alleged that the order was passed on grounds which are totally alien to the consideration which should weigh while passing an order of recount.

2. I have heard the learned counsel for the parties.

3. Mangal Singh challenged the election of Mander Singh to the office of Sarpanch of Gram Panchayat of village, Mahla Khurd, inter alia, on the grounds that Presiding Officer in connivance with Mander Singh rejected valid votes which should have been counted in the kitty of Mangal Singh. At the time of counting, Presiding Officer did not take into account those valid votes. He in connivance with Mander Singh accepted invalid votes in his kitty which should have been rejected being invalid votes. Counting of invalid votes which merited rejection in the kitty of Mander Singh while not counting of valid votes which merited acceptance in the kitty of Mangal Singh turned the tables in favour of Mander Singh. On account of

this leaning of the Presiding Officer in favour of Mander Singh, result of election was materially effected.

4. Learned counsel for the petitioner-Mander Singh submitted that merely because margin of victory was very small is no ground to order recount. It was submitted that order of recount can be passed only if case for recount is laid in the election petition and then substantiated at the trial. In this case, he submitted there is only allegation by Mangal Singh that Presiding Officer was conniving with Mander Singh and he unduly rejected the valid votes polled in his favour and unduly accepted invalid votes in the kitty of Mander Singh. He has not set out that the votes polled by such and such persons in his favour were valid votes and votes polled by such and persons in favour of Mander Singh were invalid votes. It was submitted that there can be no fishing enquiry by the Election Tribunal. It was submitted that recount cannot be ordered casually and in routine because if order of recount is passed casually and in routine, it will impinge upon the secrecy of ballot and secrecy of ballot is sacrosanct in democracy.

5. In *P.K.K. Shamsudeen v. K.A.M. Mappillai Mohindeen and Ors.*, AIR 1989 S.C. 640, the Hon'ble Supreme Court observed that an order of recount of votes must stand or fall on the nature of the averments made and the evidence adduced before the order of recount is made and not from the results emanating from the recount of votes. The settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hind sight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principal which cannot be lightly or hastily broken unless there is *prima facie* genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a *prima facie* case of a high degree of probability existed for the recount of votes being ordered by the Election

Tribunal in the interest of justice, a Tribunal or court should not order the recount of votes.

6. It was submitted that in this case only allegation which constitutes foundation for claiming recount by Mangal Singh is that the Presiding Officer in connivance with Mander Singh illegally rejected valid votes which should have been counted in his kitty and he in connivance with Mander Singh illegally accepted invalid votes and counted them in the kitty of Mander Singh which should not have been counted but rejected.

7. In *T.H. Musthaffa v. M.P. Varghese and Ors.*, (1991) 8 S.C.C. 692, the Hon'ble Supreme Court held that smallness of margin of votes by which election was decided is irrelevant. The allegation made in the course of the petition is that there is wrong acceptance of invalid votes polled for respondent-1. It is not made clear as to how many votes are liable to be rejected for using wrong instrument by the voters for expressing their preference. There is no further indication as to how many of such votes had been polled in favour of respondent-1 so as to materially affect the result of the election. In the absence of such plea the trial court could not have granted the relief of recount.

8. It was submitted that the re-count had been ordered by the Election Tribunal on insufficient averments and insufficient evidence.

9. In *Satyanarain Dudhani v. Uday Kumar Singh*, AIR 1993 S.C. 367, the Hon'ble Supreme Court held 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 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.

10. It was submitted that recount could not have been ordered when not even a single instance showing any irregularity in the counting was brought to the notice of Presiding Officer and there is no contemporaneous evidence to show any irregularity or illegality in counting. Ordinarily, it would not be proper to order recount on the basis of bare allegations in the election petition.

11. In *V.S. Achuthanandan v. P.J. Francis and Anr.*, (1999) 3 S.C.C. 737, the Hon'ble Supreme Court reiterated certain guide-lines and conditions which are imperative before a Court can grant inspection of the ballot papers as laid down in *Bhabhi v. Sheo Govind*, (1976) 1 S.C.C. 687, which are set out below:-

1. That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
2. That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;
3. The Court must be *prima facie* satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;
4. That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;
5. That the discretion conferred on the Court should not be exercised in such a way as to enable the applicant to indulge in a roving enquiry with a view to fish materials for declaring the election to be void; and
6. That on the special facts of a given case sample inspection may be ordered to lend further assurance to the *prima facie* satisfaction of the Court regarding the truth of the allegations made for a re-count, and not for the purpose of fishing out materials.

12. In *Mithu Singh v. Ranjit Singh and Ors.*, (1996-1)112 P.L.R. 217, a learned Single Judge of this Court held that recount cannot be ordered for making a fishing enquiry as to whether any illegality or irregularity was committed in counting of votes.

13. It is true that recount cannot be ordered casually and in routine. It is also true that smallness of margin of votes between the winning and losing candidate cannot be a ground for recount. For securing recount, foundation has to be laid in the election petition. There should be averment in the election petition, which

makes out a case for recount and further that averment should be prima facie proved at the trial by adequate evidence. While ordering recount, Court has also to value the principle of secrecy of votes on which the very edifice of democracy rests. If secrecy of vote is allowed to be violated for no sufficient reason, democratic process shall be imperiled because people will hesitate to cast their votes without fear and favour at the ensuing election as during recount, one or the other candidate might allow this thing to go into his head that A, B, C, D- did not cast votes in his favour though they had promised to cast votes in his favour and by not casting votes in his favour, they had played foul with him, they should be taught lesson, he or his men might commit violence against them.

14. In this case, however, the election petitioner has stoutly alleged in the election petition that the Presiding Officer in connivance with Mander Singh illegally rejected valid votes of Mangal Singh and at the time of counting did not take into account those valid votes and further Presiding Officer in connivance with Mander Singh illegally accepted invalid votes of Mander Singh, which otherwise should have been rejected and not taken into account. At the trial also Mangal Singh had adverted to this position quite explicitly. He has stated that he was not allowed to go in the venue where counting was going on. Presiding Officer in connivance with Mander Singh did not count votes in his kitty which should have been counted. Similarly, he counted some votes in the kitty of Mander Singh which should not have been counted and improper counting of votes by Presiding Officer has materially affected the result of the election. If there had been just and fair counting, he would have been declared elected to the office of Sarpanch. To the same effect is the statement of Karam Singh, who has stated that he was inside the venue of the counting at the time of counting and he was declared elected to the office of panch as he secured votes more than which others had polled. He has stated that improper counting of votes affected the result of election to the office of Sarpanch.

15. 1320 votes were polled in all at the election of Sarpanch. Mangal Singh polled 622 votes while Mander Singh polled 626 votes. 73 votes were rejected. Mere small margin of votes between the winning and losing candidate would not have been sufficient to order recount. Smallness of margin of votes between the winning

and the losing candidate could be sufficient to order recount in view of this allegation made by the petitioner that there had been improper counting of votes by the Presiding Officer in as much as valid votes which should have been counted in the kitty of election petitioner were not counted while invalid votes which should not have been counted and which should have been rejected were counted in the kitty of Mander Singh.

16. In this case, I think the order of recount was necessary to do full justice in the case. If recount does not take place, no wonder, the will of the electorate remains stultified and undemonstrated by the imposition upon them of candidate whom they never wanted to elect. Court has to strike a balance between the principle that secrecy of vote has to be maintained and the principle that the will of the electorate should prevail and no body should get elected against the will of the electorate in the grab of the principle that 'recount should be ordered when foundation of case for recount has been laid in the pleadings and further substantiated at the trial.' 17. For the reasons given above, this revision fails and is dismissed.