

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

**CWP No.14784 of 2006**

**Date of Decision: 30.11.2006**

**Tarsem Lal**

Petitioner

versus

**The Addl.Civil Judge (Senior Division), Kurukshetra & others**

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

**HON'BLE MR. JUSTICE PRITAM PAL**

Present: Shri Pritam Saini, Advocate for the petitioner  
Shri Arvind Singh, Advocate for the respondents

**Jasbir Singh, J.**

Petitioner, as well as, respondent Nos.2 to 4 contested election for the post of member of Block Samiti, Thanesar from Ward No.11, which was held on 3.4.2005. The petitioner was declared winner by a margin of two votes as against respondent No.2. Respondent No.2 then filed an election petition, challenging election of the petitioner, wherein various charges were levelled against him, including the one that at the time of counting, the petitioner, in connivance with respondent No.5, had committed many irregularities and respondent No.2 was wrongly declared defeated though he was the winning candidate. After notice, reply was filed by the petitioner. On perusal of pleadings of the parties, issues were framed and the parties also led evidence to support their case.

At the time of arguments, counsel for respondent No.2 made a statement before the Court below that he wanted to press his prayer only regarding re-counting of the votes. The Tribunal below, vide order dated 14.8.2006, ordered re-counting of votes, by observing thus:-

*“After going through the evidence on the file I am of the considered opinion that the petitioner has made out a prima facie case to the satisfaction of this court for recounting of the votes because first of all there is a margin of two votes only in favour of the respondent No.1 and rejected votes are 117 and 20 votes were missing. The petitioner when appeared into the witness box has stated through affidavit that he along with his agent had raised objection on illegal counting, but the Returning Officer has not given any attention to their requests and request of the petitioner for recounting of the votes was rejected. This version of the petitioner also supported by other witnesses, such as PW2 Ram Kumar PW3 Dharambir, PW4 Balkar Singh, in Budlu Ram’s case (supra) it is held by the Hon’ble High Court that fate of the election petition was based on only recounting which was not objected to, held legal. In Radha Kisan’s case (supra) it is held by the Hon’ble High Court that applicant if makes definite averments on verification supported by unambiguous details, in accordance with law, supported by documents, if any and makes out a prima facie case to the satisfaction of Court. Nothing prevents Courts from ordering scrutiny and computation of the votes. In Sohan Lal’s case (supra) it is held by Hon’ble Apex Court that in election petition after declaration of result, court of*

*tribunal can direct recounting of votes even if party has not first applied in writing to Returning Officer for recounting of the votes. So, in view of the cogent evidence produced by the plaintiff to the effect that his request for recounting of the votes was turned down by the Returning Officer illegally. Respondent No.1 has elected by margin of two votes only and 117 votes were rejected. So, there is a prima facie case for recounting of the votes. Remaining findings on this issue will be given after recounting of the votes because it will be dependent upon the result of the recounting, whether petitioner is entitled to elect as member of Block Samiti or not.”*

Order, referred to above, has become final. Subsequent thereto, re-counting was conducted by the Tribunal in the presence of the parties, their counsel and the Presiding Officer. Respondent No.2 was declared winner. He got 1098 votes in his favour, as against this, the petitioner could get only 1053 votes. It is apparent from the records and as averred by respondent No.2 in his written statement, the petitioner was present at the time of re-counting of votes. To the procedure and method adopted for re-count, he never raised any objection before the Presiding Officer, who was present at that time.

At the time of arguments before this Court, counsel for the petitioner has not levelled any allegations against the Presiding Officer. Merely because detail of the rejected votes and the votes secured by the petitioner and respondent No.2 has not been given in the order, the order under challenge can not be set aside. It has been found as a matter of fact that the Returning Officer had colluded with the petitioner and the initial counting was not done properly. In view of findings given by the Tribunal

below in its order dated 22.8.2006, no case is made out for interference in pure findings of fact.

Dismissed.

**( Jasbir Singh )**  
**Judge**

**November 30, 2006**  
*gk*

**( Pritam Pal )**  
**Judge**