

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

COCN No. 777 of 2007

Date of Decision: May 31, 2007

Gurnam Bindra Singh

...Petitioner

Versus

H.I.S Grewal, Deputy Commissioner-Cum-Election Tribunal, SAS Nagar,  
Mohali

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Umesh Narang and Ms. Gursreet Kaur, Advocate,  
for the petitioner.

Shri V.K. Sibal, Advocate, for the respondent.

HEMANT GUPTA, J.

The petitioner is an elected candidate from Ward No. 15 of Municipal Council, Mohali. The said election of the petitioner is subject matter of Election Petition filed by one Kulwant Singh under Section 76 of the Punjab State Election Commission Act, 1994, which is pending before the respondent.

On 17.4.2007, an application was filed by Shri Kulwant Singh for summoning the election record for Ward No. 15. On the said date the Election Petition was posted for hearing for the first time before the respondent. The said application was allowed on 17.4.2007 itself. It is the case of the petitioner that the copy of the aforesaid order was not supplied to the petitioner, but on 18.4.2007, the newspapers carried reports that the Election Tribunal, has ordered recount of votes and such recount would be done on 24.4.2007.

The petitioner filed a Writ Petition dated 21.4.2007 before this Court on 23.4.2007, wherein the petitioner pleaded as under:-

“ .....The situation appears to have been created due to the change in the Government in the State of Punjab, and apparently all out efforts are being made to deny the petitioner any opportunity to even challenge the order of recount, which is wholly perverse and illegal. The blatant attempt to obstruct the administration of justice and to hinder the basic right of the petitioner to pursue his legal remedy against the order of recount amounts to a criminal contempt on the part of the respondents, for which offence, appropriate proceedings deserve to be launched by this Hon'ble Court against them.

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That entire sequence of events as narrated in the petition, coupled with the colourable exercise of power as referred to above, makes it amply clear that a deliberate attempt is being made to withhold the order dated 17.4.2007 from the petitioner so that the petitioner is made to face a fait accompli and is not in a position to challenge the recount despite the order of recount being wholly perverse and not capable of withstanding judicial scrutiny for even a moment. The actions of the respondents in attempting to obstruct the administration of

justice amounts to criminal contempt on their part for which they deserve to be proceeded against by this Court and suitably punished.”

The said writ petition was withdrawn on 24.4.2007 as the writ petition was filed on the basis of the press reports but there was no order of recount.

The election petition was taken up for hearing by the respondent on 24.4.2007 when the Election Tehsildar, Mohali, brought the record pertaining to election to Ward No. 15. The learned counsel for the petitioner has placed reliance upon three judgments to contend that the order of recount of votes should not be passed by the Tribunal. The case was adjourned to 8.5.2007 for arguments. On 8.5.2007, the election petition was taken up for hearing at 3.00 p.m., whereupon, the recount was done orally and carried out at 3.30 p.m. The learned Deputy Commissioner recorded a detailed order running into 10 pages bearing the date as 8.5.2007. In the said order, an application filed by the petitioner for framing the issues was rejected. The respondent concluded in his order dated 8.5.2007 to the following effect:-

“After having read the contents of the Election Petition, the reply of the respondent very carefully and giving very thoughtful consideration to the arguments advanced by the learned counsel for the petitioner and the respondent, I do not find the reason as to why respondent No.1 is shying away from the recount. The hallmark of Parliamentary Democracy is the ascertainment of will of the people which in this case can only be done through

recount. In view of facts and circumstances set out supra in the interest of justice, equity and fair play it is imperatively essential that the votes polled for the election of Ward No. 15, Municipal Council, SAS Nagar, be recounted.

The recounting took place at 3.30 p.m. today i.e. 8.5.2007 and was conducted under my direct supervision by Mrs. Navjot Kaur, PCS, AC (Grievances), Sh. P.S. Virk, District Development and Panchayat Officer and Sh. Hardip Singh, Election Tehsildar, Mohali. The result of the recounting has been put in a sealed cover in the sealed trunk in the Treasury at Kharar.”

The grievance of the petitioner is that on 7.5.2007 revision petition under Article 227 of the Constitution of India for transfer of the election petition pending before the respondent, came up for hearing before this Court, when passing of final order was stayed.

It is the contention of the petitioner that when the counsel for the petitioner reached the Court at 3.00 p.m., there were full arrangements for recount of votes and the respondent scolded the counsel for the petitioner badly for moving this Court for transfer of the election petition. The counsel for the petitioner were snubbed and intimidated and were not allowed to make any submissions. Reference was made to the affidavits filed before the Hon'ble Chief Justice, the copies of which have been attached as Annexures P.5 and P.6. The relevant paragraphs of the affidavit of Shri Umesh Narang, Advocate (Annexure P.5) read as under:-

“7. That when we reached the Court at 3.00 p.m. there were full arrangements for recounting of votes. At the outset the learned Election Tribunal-cum-Deputy Commissioner, SAS Nagar, Mohali H.I.S. Grewal ordered that every other case except the election petition are adjourned. He has received the Hon'ble High Court orders in Civil Revision by that time. On seeing us Election Tribunal-cum-Deputy Commissioner, SAS Nagar, Mohali scolded us badly for moving the Hon'ble High Court for transfer of election petition. I along with my associate was shocked to see his attitude and tried to make our submissions on the case. On this I along with my associate was snubbed badly and intimidated. Every one except the officials and the counsel for the parties were asked to leave the Courtroom, the doors of the courtroom were locked, and Police was called. My associate and I were being snubbed and intimidated continuously for every submission put forward.

9. That H.I.S. Grewal Election Tribunal-cum-Deputy Commissioner, SAS Nagar Mohali ordered recount verbally and recounting started. The officials who were associated for recounting were not identified and then came the worst part. H.I.S. Grewal, Deputy Commissioner, SAS Nagar Mohali started making a mockery of the Hon'ble High Court and declared himself and the official's associated with recounting as a Constitution Bench. He said that he has every right to pass any order in the election petition and he is not afraid of High Court. “What High Court can do, they can only send me to Burail Jail for six months I am ready to go to Jail, but being a true soldier of Akali Govt., I will not only order recount but also can order a re-poll in this case and with the help of our own Govt. we will definitely win the elections.” These were the words said in the Court. The situation was frightening for my lady colleague and

me. Then the Deputy Commissioner Mohali started making mockery of one of the Hon'ble Judge of the High Court by naming him Justice Singhvi.

10. That my colleague and me were shocked, frightened, embarrassed and ashamed of such acts of the Deputy Commissioner, SAS Nagar, Mohali. We have never seen such a disrespectful act against law or against any Court of Law by a Presiding Officer. It seems that Law of Dictatorship was prevailing in the Courtroom of Election Tribunal-cum-Deputy Commissioner, SAS Nagar, Mohali.

11. That we have no option except to walk out of the court of Election Tribunal-cum-Deputy Commissioner, SAS Nagar, Mohali in such a situation created by the Deputy Commissioner, HIS, Grewal. Such an act and conduct by the Deputy Commissioner H.I.S. Grewal in the open Court is contemptuous.”

To the similar effect is the affidavit of Ms. Gursreet Kaur, Advocate (Annexure P.6).

In pursuance of the show cause notice issued, an affidavit has been filed on behalf of the respondent. It has been stated therein that the record pertaining to election to Ward No. 15 was summoned by the predecessor of the answering respondent on 20.2.2007 and the sole purpose of summoning of the record was to recount the votes polled in the election to Ward No. 15. Counsel for the petitioner and the respondent argued in favour and against the recount and at the joint request, the case was adjourned to 8.5.2007. The respondent has admitted that on 8.5.2007, all arrangements for recount had been made and all cases except the election petition were adjourned. It is also admitted that the order of the High Court has been received before 3.00 p.m. on 8.5.2007. It is pointed out that the

application for framing of the issues has been dealt with at length in the order dated 8.5.2007, while stating that the result of the recount has been kept in a sealed cover.

The above narration of facts shows that prior to 17.4.2007, the proceedings in the election petition were being entertained by the Election Tribunal presided over by another Presiding Officer than the respondent. On 17.4.2007, an application filed by the election petitioner was allowed though the newspapers carried the report of recount but the fact remains that no order of recount was passed.

On 24.4.2007, the petitioner has raised objections regarding the recount of votes and referred to certain judgments of the Hon'ble Supreme Court. On 8.5.2007, the proceedings were taken up at 3.00 p.m. and by 3.30 p.m. recount of votes had taken place. Such process of recount has been undertaken without passing a written order, which is apparent from the concluding lines of the aforesaid order, nor the 10 pages order could be dictated, prepared, typed and finalised within 30 minutes.

Still further, the conduct of proceedings by the Presiding Officer whereby the counsel for the petitioner were snubbed and intimidated, prima-facie, shows that the Advocates present were obstructed to discharge their duties in the cause of administration of justice. The allegations have been levelled in respect of mockery of High Court and one of its former Judges. Such conduct of proceedings, prima facie, obstructs the cause of administration of justice and interferes with the due course of any judicial proceedings which were being presided over by the respondent himself. Thus, such actions make the respondent liable to be proceeded against for committing a criminal contempt.

Learned counsel for the respondent has relied upon a judgment of the Hon'ble Supreme Court reported as **Bijayini Dash and others v. Loknath Mishra and others, (2005)9 Supreme Court Cases 194**, to contend that the criminal contempt proceedings can be invoked by the petitioner only with the prior consent of the Advocate General of the State under Section 15 of the Act. Since the petitioner has not obtained such consent, the present petition is not maintainable. However, the said argument is not available, in as much as in the aforesaid case itself, it has been noticed that the contempt proceedings have not been initiated by the High Court suo-motu, However, in the present case the proceedings have been initiated suo-motu by this Court though on the facts brought to the notice of this Court by the petitioner.

Learned counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court in **Bal Thackrey v. Harish Pimpalkhute, AIR 2005 SC 396**, to contend that the High Court can take the cognizance of a criminal contempt on its own motion on the basis of information supplied by the petitioner in a petition. In the aforesaid case, the earlier judgment of the Hon'ble Supreme Court in **U.P., Lucknow v. Vinay Chandra Misra (1981)1 SCC 436**, was quoted. In the aforesaid case, it was held to the following effect:-

“But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate General, can the High Court refuse to entertain the same on the ground that it has been made without the consent in writing of the Advocate General? It appears to us that the



High Court, has, in such a situation, a discretion to refuse to entertain the petition, or to take cognizance on its own motion on the basis of the information supplied to in that petition.”

In **Bal Thackrey's case (supra)**, the Hon'ble Supreme Court found that if a private person desires that an action of criminal contempt should be taken, one of the three courses is open to him. He may place information in his possession before the Court and request the Court to take action; he may place the information before the Attorney General and request him to take action; or he may place information before the Attorney General and request him to permit him to move to the Court. It was held that the Court has the power and jurisdiction to initiate contempt proceedings suo motu and for that purpose the consent of Advocate General was not necessary, but at the same time, it is also to be borne in mind that the Courts normally take suo motu action in rare cases.

In view of the aforesaid enunciation of principle of law, the Court has the jurisdiction to initiate contempt proceedings suo motu, may be in rare cases, on the information which comes to the knowledge of the Court in any of the modes including that by way of a petition for initiation of a civil contempt. The present is the case where prima facie, the proceedings have been alleged to have been conducted in a manner, which lowers the dignity of the authority of law and by a person, who is engaged in the administration of justice. The actions, utterances and conduct of proceedings by the respondent prejudice and interfere with the due course of judicial proceedings and/or interfere or tend to interfere or obstruct or tend to obstruct the administration of justice.

Therefore, I am satisfied that prima-facie, the allegations disclose commission of a criminal contempt within the meaning of Section 2 (c) of the Contempt of Courts Act, 1971 and, therefore, I hereby take suo-motu notice of the contempt.

Accordingly, I order that the present petition be treated as a criminal contempt petition. The papers of the present case be placed before the Hon'ble Chief Justice, for placing it before the appropriate Bench.

May 31, 2007  
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(HEMANT GUPTA)  
JUDGE