

Consequently, declining reference on this ground with respect to one Khasra number cannot be sustained. The respondents are directed to make reference of the entire claim of the petitioner to the District Judge wherein the State will be at liberty to take objection with respect to the title of the petitioner. In view of the observations made above, the respondents are directed to make reference within four weeks with respect to Khasra number 94/3/2.

(3) With this direction this writ petition stands disposed of.

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J.S.T.

Before Hon'ble Ashok Bhan & N.K. Sodhi, JJ

PARDAMAN SINGH--Petitioner

versus

STATE OF PUNJAB & OTHERS--Respondents

C.W.P. No. 3688 of 1995

30th May, 1996

*Punjab Gram Panchayat Act, 1952--s.13(B)--  
Election petition--Vague allegations for recount in  
such petition--Oral request for recount--Authority  
ordering recount--Validity of the order.*

Held that an order of recount cannot be passed on the mere asking of a party. There have to be proper pleadings making out the case for recount, framing of an issue and contemporaneous evidence to substantiate the plea of recount. In the present case, recount has been ordered on vague pleadings, without framing an issue, on an oral request without taking any evidence holding that the same would be in the interest of justice and to maintain 'purity of the election' as it would do no harm to anybody, thereby making a mockery of the basic principles

of law as laid down by Hon'ble Supreme Court and this Court relating to the plea of recount of votes in an election dispute. The orders are unsustainable in law and deserve to be quashed.

(Para 6 & 8)

(A.I.R. 1993 S.C. 367 Relied)

H.S. Mattewal, Senior Advocate, with Gurminder Singh, Advocate for the Petitioner.

S.S. Saron, Additional AG(P) for Respondents/1 to 3.

M.L. Sarin, Senior Advocate, with Mr. Vikas Suri, Advocate for the Respondent No. 4.

#### JUDGEMENT

(1) Short point which falls for determination in this writ petition is that whether the prescribed authority in an election dispute can order recount of votes on a vague plea without framing an issue on an oral request without taking any evidence.

Election of the Gram Panchayat Lande-Ke, tehsil Moya, district Faridkot, was held on 18th January, 1993. Election were held under the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as 'the Act') Pardaman Singh petitioner (herein after referred to as 'the petitioner' was declared elected having secured the highest number of votes. Mohinder Singh, respondent No. 4 (hereinafter referred to as 'respondent No. 4') obtained the second highest number of votes. Respondent No. 4 filed an election petition under section 13-B of the Act on 29th January, 1993, on the grounds of commission of corrupt practices and polling of dead votes in favour of the petitioner. Prayer made was for setting aside the election of the petitioner and to hold a fresh election. No declaration under Section 13(00) of the Act that respondent No. 4 be declared elected in place of

the petitioner was made. In para 5-G of the election petition, Annexure P-1, vaguely, it has been mentioned that a recount be ordered which would bring the truth on the surface. On 2nd December, 1993, respondent No. 4 made an oral request for recount of the votes and agreed to give up all other claims stated in the petition. Prescribed authority, after hearing the counsel for the parties and feeling satisfied that the request of respondent No. 4 was in the interest of justice for a fair election, ordered the recount of the votes. Block Development and Panchayat Officer, Moga, who was the Returning Officer was sent for along with the relevant election record for 10th December, 1993. The case could not be taken up on the aforesaid date because the prescribed authority was busy with the visit of the Commissioner, Ferozepur Division, Ferozepur, to Moga. The case was adjourned for 14th December, 1993. Block Development and Panchayat Officer produced the election record on 14th December, 1993. In spite of the objections raised by the petitioner, votes were recounted. Petitioner and his counsel refused to sign the proceedings of recount of votes. On a request made by the counsel for the petitioner, the case was adjourned for a further date. Petitioner moved an application under Section 13-F of the Act, for transfer of the election petition to some other authority on which notice was issued by the Collector, Faridkot and further proceedings before the prescribed authority were stayed. Transfer application was finally dismissed by the Collector, Faridkot, on 22nd February, 1994. Respondent No. 4 moved an application before the prescribed authority along with a certified copy of the order of the Collector to take up the case and decide the same on merits. Election petition was taken up on that very day. *Ex parte* proceedings were ordered against the petitioner because neither he nor his counsel appeared. Impugned order, Annexure P-2, setting aside the election of the elected candidate as a result of recount, declaring respondent No. 4 as elected in place of the petitioner was passed.

(2) Petitioner had filed C.R. 763 of 1994 in this Court on the plea that the recount of the votes had been ordered without passing a written order. Revision petition came up for hearing on 28th February, 1994. While issuing notice of motion for 19th April, 1994, as an interim measure, it was ordered that the proceedings before the prescribed authority may go on but the final order be not passed. Petitioner produced this order before the prescribed authority in the evening but by that time, the prescribed authority had passed the impugned order, Annexure P-2. Petitioner filed an appeal along with an application for stay of the order, Annexure P-2. Petitioner prayed that charge of the office of Sarpanch be not taken. Respondent No. 4 filed his reply claiming that he had already taken over the charge. In the light of conflicting claims of the parties, status quo was ordered to be maintained during the pendency of the appeal. Appeal was ultimately dismissed on 1st February, 1995,--vide order, Annexure P-3, which has been impugned in this writ petition along with order, Annexure P-2.

(3) Two other facts which need to be noticed are that the petitioner filed a civil suit for permanent injunction restraining respondent No. 4 from denying the title of the office of Sarpanch of Gram Panchayat, Lande-Ke to the petitioner on the ground that the appellate court had ordered the maintenance of status quo and that respondent No. 4 be further restrained from taking charge forcibly of the office of the Sarpanch. Along with the suit, an application under Order 39 Rules 1 and 2, Code of Civil Procedure was filed for temporary injunction during the pendency of the suit. Application for temporary injunction was dismissed on 1st August, 1994 (Annexure R-2), holding that *prima facie* case for granting injunction was not made out. Election could be challenged only by filing an election petition and the same could not be called in question otherwise than in the manner provided under Section 13-B of the Act. Another

fact noticed by the trial court -was that the petitioner had already filed an appeal and the petitioner could, if he so desired, could get the interim order as prayed for in the suit from the appellate court. Appeal against this order was dismissed on 30th January, 1995 (Annexure R-3).

(4) Petitioner also filed an election petition challenging the election of respondent No. 4 before the prescribed authority as he had been declared elected by the impugned order, Annexure P-2. Respondent No. 4 took a preliminary objection that the election petition was not maintainable as he had been declared elected on an election petition filed by him and the order passed by the prescribed authority declaring him elected could only be challenged by filing an appeal and the same could not be challenged by filing an election petition, Thereafter, petitioner did not persue the election petition filed by him, which was ultimately dismissed for non prosecution. These two facts have not been mentioned in the petition. Respondent No. 4 has taken a preliminary objection that non disclosure of these facts amounts to concealment of material facts and the writ petition be dismissed on the ground of concealment of relevant and material facts from the Court.

(5) Procedure for holding of elections, declaration of result, filing of an election petition, contents of an election petition, grounds on which election can be set aside and the grounds on which a defeated candidate can be given a declaration of having been duly elected, have been given in Chapter II-A of the Act, which in turn is a kin to the provisions of the Representation of Peoples Act, 1961.

(6) It has been repeatedly held by the Supreme Court of India as well as this Court that an order of recount cannot be passed on the mere asking of a party. There have to be proper pleadings making out case for recount, framing

of an issue and contemporaneous evidence to substantiate the plea of recount. It would suffice to refer to the latest judgment of the Supreme Court on this point in *Shri Satyanarain Dudhani v. Uday Kumar Singh and others* (1), where their Lordships reiterated the principles laid down in the earlier judgments of the Supreme Court that 'secrecy of the ballot' could not be permitted to be tinkered lightly and a recount can only be ordered on a *prima facie* case made out on the basis of material facts pleaded and duly supported by evidence justifying a recount. It was held :--

"Thus in the instant case only three line objection application was filed before the Returning Officer. No objection whatsoever was raised during the counting and no irregularity or illegality was brought to the notice of the Returning Officer. Even the material in the election petition, has been pleaded with the objection of having a fishing enquiry and it did not inspire confidence. A cryptic application claiming recount made by that contestant before the Returning Officer. No details of any kind was moved by the petitioner. Not even a single instance showing any irregularity or illegality in the counting was brought to the notice of the Returning Officer. Held, 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."

(7) This case was under the Representation of People Act, 1961. A Division Bench of this Court in *Bharat Singh v. Dalip Singh and others* (2), while dealing with the Haryana Panchayati Raj Act, 1994, and the Punjab State Election Commission Act,

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(1) 1993 S.C. 367.

(2) (1996-1) 112 P.L.R. 70.

1994, held that in an election dispute relating to Gram Panchayat, a recount cannot be ordered as a matter of course and the same can only be ordered on the basis of material facts stated in the petition duly supported by evidence making out a *prima facie* case for recount. Similar was the view taken by a learned Single Judge of this Court in *Mithu Singh v. Ranjit Singh and others* (3).

(8) In the present case, recount has been ordered on vague pleadings, without framing an issue, on an oral request without taking any evidence whatsoever, holding that the same would be in the interest of justice and to maintain the 'purity of the election' as it would do no harm to anybody, thereby making a mockery of the basic principles of law as laid down by Hon'ble the Supreme Court and this Court relating to the plea of recount of votes in an election dispute. Orders, Annexures P-2 and P-3, being against the provisions of the Act and law laid down by the Supreme Court of India and this Court are unsustainable in law and deserve to be quashed.

(9) Relying upon the observation of their Lordships in *A. Neelalohithadasan Nadar v. George Mascrene and others* (4), that the principle of 'secrecy of ballot' has to give way to the principle of 'purity of elections', council appearing for respondent No. 4 contended that the earlier judgments of the Supreme Court were keeping in view the principle of 'Secrecy of the ballot' whereas in the present case, recount has already taken place which has conclusively proved that respondent No. 4 had obtained the highest number of votes and, therefore, to maintain the 'purity of the election', the orders passed by the authorities below be not set aside; that the principle of 'secrecy of the ballot' has to yield to the principle of 'purity of elections'.

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(3) (1996-1) 112 P.L.R. 217.

(4) 1994 Supp (2) S.C.C. 619

(10) We do not find substance in this submission. In A. Neelalohithadasan Nadar's case (supra), their Lordships found that there were pleadings for recount, an issue had been framed and the parties had led their evidence. Affirming the findings recorded by the High Court that the case for recount had been made, their Lordships observed that the principle of 'secrecy of the ballot', has to give way to the principle of 'purity of the elections'. The facts in A. Neelalohitadasan Nadar's case (supra) are distinguishable and the ratio of the law laid down in the above case would not be applicable to the facts of the present case where there are practically no pleadings and evidence and even a prayer for declaration that the election petitioner be declared elected after recount under Section 13(00) of the Act has not been made. It has not been held in A. Neelalohithadasan Nadar's case (supra) that the end result can justify the recount. Justification has to precede the order of recount and cannot be offered as a defence after the recount has taken place as held by their Lordships in *P.K.K. Shamsudeen v. K.A.M. Mappillai Mohindeen and others* (5), as under :--

"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 principle which cannot be lightly or hastily broken unless there is a *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 interests of justice, a Tribunal or court should not order the recount of votes."

(11) We shall now take up the preliminary objection regarding non-disclosure of facts of filing a suit and the election petition by the petitioner. Relying upon *Chiranji Lal and others v. Financial Commissioner Haryana and others* (6), *The Chancellor and another v. Dr. Bijayananda Kar and others* and *Dr. Prafulla Kumar Mohapatra v. Dr. Bijayananda Kar and others* (7), *M/s Kaka Ram Paras Ram and others v. State of Punjab and others* (8), *Pawan Kumar v. State of Haryana and another* (9), *Karan Singh v. State of Haryana and others* (10), and *Chint Ram Ram Chand and others v. State of Punjab and others* (11), it was contended by the counsel appearing for respondent No. 4 that the non-disclosure of facts regarding filing of suit and an election petition is fatal and the writ petition deserves to be dismissed for concealment of material facts. It was argued that had these facts been disclosed, then the Court may not have entertained the writ petition.

(12) It is true that these facts have not been disclosed by the petitioner but disclosure of these facts does not make any difference or alter the decision. In the written statements filed in the suit as well as in the election petition, respondent No. 4 had taken the objection that the same were

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- (6) 1978 P.L.R. 582.
  - (7) A.I.R. 1994 S.C. 579.
  - (8) (1996-1) 112 P.L.R. 691.
  - (9) 1994 (5) S.L.R. 73.
  - (10) (1996-1) 112 P.L.R. 686.
  - (11) 1996 (1) Rev. L.R. 262.

not maintainable and the order of the prescribed authority could only be challenged by filing an appeal. Petitioner had filed the suit that respondent No. 4 be restrained from taking charge of the office of Sarpanch because of the interim order of maintenance of *status quo* passed by the appellate Court. Civil Court, while denying the injunction, held that the election could only be challenged by filing an election petition as prescribed under the Act and no suit was maintainable. Similarly, in the election petition, on an objection taken by respondent No. 4 that it was not maintainable, petitioner did not pursue that remedy. We concur with the reasoning recorded by the Court in the civil suit as well as the preliminary objection which had been taken by respondent No. 4 in the election petition filed by petitioner challenging his election as Sarpanch. Neither the suit nor the election petition was maintainable in the given facts and circumstances of the case. The only course open to the petitioner was to file an appeal against the order passed by the prescribed authority, which the petitioner has done. Even if the petitioner had disclosed these facts, it would not have in any way altered the decision of this Court.

(3) We are also dissuaded to accept the contention of the counsel for respondent No. 4 by the fact that the petitioner had filed C.W.P. 13838 of 1994 challenging the election of respondent No. 4 as Sarpanch and, thereafter as a member of the Panchayat Samiti to which office he had been elected, he having been declared a duly elected Sarpanch. Respondent No. 4 had taken similar preliminary objection regarding non-disclosure of material facts which was not accepted and the petition was disposed of by passing the following interim order:-

**"After hearing the counsel for the parties, we are of the opinion that ends of justice would be met if we direct the learned District Judge, Faridkot, to dispose of the civil appeal, No. nil, dated March 7, 1994, Pardaman Singh**

s/o Kehar Singh v. Mohinder Singh  
s/o Jhirmal Singh and nine others,  
on January 30, 1995. We are told that  
the said appeal has been fixed for  
January 30, 1995. The learned District  
Judge should take every step that  
the appeal is disposed of on the afore-  
said date and in the event of any  
difficulty beyond his control, the  
same may be disposed of within 15  
days therefrom. The parties before  
us agree that they will remain present  
before the District Judge for arguments  
in the appeal on January 30, 1995.  
In view of the above order,  
Mr. Mattewal, the learned counsel,  
dose not press the writ petition at  
this stage. Dismissed." ;

(14) Parties appeared before the appellate authority in pursuance to the above cited directions. After the appeal was decided, present petition has been filed challenging the order passed by the prescribed authority as well as the appellate authority. Petitioner, under these circumstances, may have bona-fide believed that these facts were neither necessary nor material to be mentioned in the present writ petition.

(15) Another disturbing fact which we notice is that respondent No. 4 has been declared elected without even a prayer in terms of Section 13(oo) of the Act for declaring him elected in place of the elected candidate. We fail to understand how the prescribed authority could declare respondent No. 4 elected without a case having been set out to that effect in the pleadings.

(16) For the reasons stated above, we accept this petition with costs and set aside the impugned orders, Annexures P-2 and P-3, and remand the case to the prescribed authority, respondent No. 3, for deciding the election petition in accordance with law. Parties, through their counsel,

are directed to appear before respondent No. 3 (prescribed authority) on July 10, 1996. Costs are determined at Rs 1,000 payable by respondent No. 4.

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S.C.K.

*Before Hon'ble M.S. Liberhan & J.C. Verma, JJ.*

MOHINDER SINGH CHAWLA,--*Petitioners*

*versus*

STATE OF PUNJAB AND OTHERS,--*Respondents*

C.W.P. No. 15942 of 1995

8th April, 1996

*Constitution of India, 1950--Arts. 226/227--Medical reimbursement--Policy regarding non-reimbursement of expenses incurred by Govt. servant on account of diet, stay of attendant and patient in hotel/hospital--No reasonable ground on which reimbursement could be refused--Reimbursement of medical expenses must include total expenses incurred.*

*Held, that we fail to comprehend the reasonable nexus of the clause regarding non-reimbursement on account of diet, stay of attendant and stay of patient in the hotel/hospital with the object of reimbursement of medical expenditure incurred by the employees of the respondent-State. It is unimaginable that post operation attendance or care as is given or was given or required to be given in the hospital premises could be provided anywhere else or can be severed from the treatment or medical assistance in its totality. The post operation treatment or attendance is a part of continual act in the process of treatment of a patient. Usually and ordinarily the post operation attendance is an important as pre-operation or during the operation attendance. By reading the*