(1997) 10 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Election Petition No. 9 of 1996

Jai Narain	APPELLANT
Vs	
Kartar Devi and Others	RESPONDENT

Date of Decision: Oct. 20, 1997

Acts Referred:

- Conduct of Elections Rules, 1961 - Rule 56(2), 56(3), 56(4)
- Representation of the People Act, 1951 - Section 83

Citation: (1998) 118 PLR 546 : (1998) 2 RCR(Civil) 209

Hon'ble Judges: R.S. Mongia, J

Bench: Single Bench

Advocate: O.P. Goyal and Sandeep Kumar, for the Appellant; R.S. Mittal Aarti Gupta and B.R. Mahajan, for the Respondent Nos. 5, 6, 10, 11 and 18, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Mongia, J.

In this election petition, petitioner Jai Narain has challenged the election of respondent No. 1 Kartar Devi who had been elected from 32 Kalanaur Assembly Constituency of Haryana, for which the polling took place on April 27,1996. The grounds for challenge are the alleged irregularities at the time of counting of votes, illegal acceptance of the invalid votes and rejection of valid votes etc. to which detailed reference will be made hereinafter. Apart from the petitioner and respondent No. 1, there were 19 other candidates (respondents No. 2 to 20), who had also contested the election from the aforesaid Assembly Constituency. Respondent No. 21 Shri Suraj Bban, a Haryana Civil Service Officer, who was City Magistrate of Rohtak, had been appointed as the Returning Officer. The petitioner was the official candidate of B.J.P. to whom symbol of ''Lotus'' had been allotted. Respondent No. 1 was the official nominee of the lndian National Congress and had been allotted the symbol of ''open hand''. Respondent o. 19 was the official nominee of Samata Party having ''Mashal'' as his symbol and respondent No. 14, Shamsher

Singh, an independent candidate, was allotted the symbol of ''glass jar. The positioning of the name of the petitioner and respondent No. 14 in the ballot paper was in the same line against each other. The dummy ballot paper which was made available to the voters has been attached as Annexure P.1, with the election petition. According to the pleadings, there were 139 polling booths. 61143 votes were polled which included 69 postal ballots. Kartar Devi, respondent No. 1, had polled 16733 votes whereas petitioner Jai Narain had polled 15818 votes. The total rejected votes were 2364 apart from 11 postal ballots, which were rejected. Difference of votes between the petitioner and the returned candidate (respondent No. 1) was of 915 votes.

2. It has been alleged in the petition that respondent No. 1 had earlier also won in the previous Haryana Legislative Assembly election in 1991 as a candidate of the Indian National Congress. Indian National Congress party had returned to power in the Haryana Legislative Assembly election in 1991 and had formed the Government under the Chief Ministership of Ch. Bhajan Lal and respondent No. 1 was made a Minister of Cabinet rank and had been allocated the portfolio of Excise and Taxation for the years 1993-94 and when the present elections took place, respondent No. 1 was the Health Minister in the State of Haryana and was, therefore, enjoying a good amount of clout with the bureaucracy and the ministerial staff in the State of Haryana. It has further been stated that respondent No. 1 belongs to Scheduled Caste category, i.e., ''Chamar''. Shri Ishar Singh, who was the Political Secretary of respondent No. 1 while she was the Health Minister, had been appointed by her as her election agent in the election in question and was also her counting agent. The Returning Officer vide order dated April 30,1996, had detailed officers and officials mostly of Excise and Taxation Department and Industries Department on election duty for purpose of counting the votes of 32 Kalanaur Assembly constituency. It is further alleged that respondent No. 1 knowingly and by design got the counting assistants appointed mostly from the Excise and Taxation Department and also from the Industries'' Department mainly for the reason that she had been Excise and Taxation Minister and further also that her brother Ashok Kumar was serving in the District Industries Centre, Rohtak. It is further alleged that a good number of counting assistants belonging to her caste were got detailed to count the votes of the Assembly Constituency in question, The further facts mentioned in the petition are that the counting of votes started at 8 AM on May 8, 1996, at Vishwakarma Model High School, Jhajjar Road, Rohtak. There were seven tables placed in a row from table No. 1 to table No.7 in-seriatim for purpose of counting of votes. Opposite thereto, there were tables for counting of the votes of the Rohtak parliamentary Constituency. The tables were put in a wire-mesh enclosure. The distance of the counting tables from the wiremesh was about 1-1/2 ft. The first bench placed outside the wiremesh for the counting agents was at a distance of about 1-1/2 ft. from the first bench and the third bench was at the same distance from the second bench. The width of each bench was about 1 ft. There were, 21 counting agents for

each counting table because each of the candidate had appointed counting agents one each for each of the table. The Returning Officer had allowed the police to enter within the wiremesh enclosure. According to the petitioner, this was allowed by the Returning Officer to create awe and fear rather than to maintain law and order and discipline in the matter of counting. The counting agents sitting on the third bench were not able to see the seal mark on the ballot papers properly because of the distance and also because of the obstruction put by first and 2nd row of counting agents sitting on the first and second bench. The position of the counting agents sitting on the second, row was not any better. There was continuous commotion and disturbance amongst the counting agents in order to watch the interest of their respective candidates. The police was not allowing the counting agent stand on the benches and, the counting agents were not able to see the seal marks while sitting on the benches. The result of all this was that the counting agents were not able to keep the necessary vigil over the counting staff and the counting process in the matter of counting of votes. The petitioner has given the names of each of his counting agents who were appointed as such for each of the seven counting tables. It is further stated that the petitioner was himself also present in the counting hall except for short periods when he had to go outside. The further allegation is that respondent No. 1, in connivance with the Returning Officer, got a large number of counting staff posted on table No. 1 to table No.7, who belong to her caste. This was with a view to obtain undue advantage at the time of counting because of the Caste sympathy. The names of the counting staff belonging to the caste of respondent No. 1 who were posted at table No. 1 to 3 have been mentioned. It is further mentioned that on table No. 4, one Suraj Kumar, Clerk of Deputy Registrar, Co-operative Societies, Rohtak, was posted as counting agent who is a relation and friend of Shri Ishar Singh, election agent of respondent No. 1 One Madan Lal who was also one of the counting staff on table No. 4 was the cook of respondent No. 1 for a long time and thereafter respondent No. 1 got him employed as a peon. Since the petitioner did not know either the caste of the person posted on various table or relationship of Ashok Kumar with respondent No.1 before or at the time of counting, therefore, no grievance was made regarding their appointments. These persons who had been appointed as the counting staff played their part in helping respondent No. 1 in counting. The details of irregularities allegedly committed at the time of counting have been given in paragraphs 10-A and 11 (a), (b) and (c). Since the entire case asking for recount revolves around these pleadings, it will be apposite to reproduce the same :

xx xx xx (Paragraphs omitted - Editor)

3. Further it has been alleged that the petitioner and other candidates and their election agents protested repeatedly to the Returning Officer the illegalities and irregularities being committed by the counting staff but he did not pay any attention, to the same and rather brushed aside the objections by saying that the counting was going on perfectly. It is alleged that the Returning Officer had assured

the petitioner that after all he was the winning candidate and should not bother much about little irregularities here and there in the process of counting. It has further been averred in the petition that the Returning Officer did not allow any counting agents, election agent or the candidate any paper, pen, watch, ring etc. inside the counting hall. To a protest made to the Returning officer by the petitioner as to why the Returning, officer by the petitioner as to why the candidates and their election agents had been stopped the entry in the counting arena, it was replied to by the Returning Officer, that this was done on the instructions of the Central Observer. It has further been averred that when the Central Observer came to the counting hall at 11 AM on May 9, 1996, he had said that he had not given any orders/instructions to the Returning Officer not to allow the candidates/counting agents from entering the courting arena.

4. As per the petition, an application was made by the petitioner to the Returning Officer at 2.55 PM on May 9, 1996, asking recount but the application was oraliy rejected. This was in the presence of respondent No. 1 The Returning Officer did not pass any order in the presence of the petitioner. The copy of the application which is in vernacular has been appended as Annexure P-4. The application when translated into English reads as urder :

"From

Jai Narain Khundiya,
BJP candidate, Kalanaur Legislative
Assembly, (Reserve) Haryana.
9.5.96

To

The Returning Officer,
32 Kalanaur, Legislative Assembly Area.

Sir,

It is submitted that today 9.5.96 I am B.J.P. candidate of the aforesaid Assembly Constituency. At the time of counting, proper decision was not taken while cancelling ballot papers. While making bundles of the ballot papers, the real result of counting is being changed by keeping the votes polled in favour or Congress (I) above the votes polled in my favour.

It is worth mentioning that Congress (I) candidate is Minister of Haryana Government. Therefore, by putting pressure on the Government employees, the process of counting was started wrongly.

I demand recount of votes. Recount may please be ordered to save democracy.

Applicant
(Jai Narain Khundiya)
candidate 32 - Kalanaur Legislative

Assembly Constituency.

Copy to:
Chief Election Officer, Chandigarh.
Chief Election Commissioner, New Delhi."

Separate written-statements have been filed - one by respondent No. 1, another by respondent No.5, third by respondent No.6, fourth by respondent No. 10, fifth by respondent No. 11, sixth by respondent No. 18 and the seventh by respondents No.5, 6, 10, 11 and 18. We are here concerned with the written statement filed by respondent No. 1 only, to which reference was made at the time of arguments. In the preliminary objections in the written-statement filed by respondent No. 1, it has been averred as under:

"1. The election petition does not disclose any cause of action and deserves to be dismissed on this short ground. The allegation of corrupt practice made u/s 123(7) of the Representation of the People Act, 1951, hereinafter referred to as the "Act" in the election petition, even if accepted on its face value does not amount to a corrupt practice within the meaning of Section 123(7) because Ishwar Singh was not one of the persons of the various classes mentioned in Section 123(7) of the Act. He was only a Special Assistant of the answering respondent during the period when she was a Minister in the Haryana Government. He was not a Political Secretary, as alleged by the petitioner and even he had resigned from the office of J.B.T. Teacher much before the Election Commission of India '' published the Notification calling for the election to the Haryana Legislative Assembly on 18/19th March, 1996. The petitioner has himself admitted in para 5 of the election petition that the Government service of Ishwar Singh aforesaid came to an end on 25.2.1996, when his application for voluntary retirement was accepted by the District Primary Education Officer, Rohtak.

2. The allegations made by the petitioner in support of his demand for recounting are false and frivolous, but even if for the sake of arguments, they are accepted on their face value, they do not disclose a justifiable ground for ordering recounting of votes, according to the law laid down by the Hon''ble Supreme Court "of India in various judgments including : P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindeen and Others, : Dr. Jagjit Singh Vs. Giani Kartar Singh and Others, ."

5. It may be observed here that the allegations of alleged irregularities at the time of counting have been denied by respondent No. 1 in the written-statement.

6. On the pleadings of the parties, issues were framed. Issues No. 1 and 2 were treated as preliminary issues, which are in the following terms:

" 1. Whether the election petition does not disclose any cause of action? OPR-1

2. Do the allegations made in para No. 1O-A of the election petition lack material particulars, If so, its effect ? OPR-1.

The counsel for respondent No.1 had stated that they did not wish to produce any evidence on the preliminary issues.

7 Learned counsel for respondent No. 1 argued that the election petition is liable to be dismissed at the threshold as the contents thereof do not disclose any cause of action. An election petition, as per Section 83 of the Representation of peoples Act, 1951, is required to contain a concise statement of material facts and particulars on which the petitioner relies and in case in any alleged corrupt practice, the petitioner is required to give full particulars thereof including as full a statement as possible of the names of the parties alleged to have committed the corrupt practice and the date and place of commission of each such practice. The petitioner cannot be allowed to have a fishing and roving enquiry done at the instance of the Court by ordering recount of the ballot papers. Recount cannot be ordered on the dint of the petitioner but precise case: giving details of the irregularities has to be mentioned in the election petition. The details of improperly rejected or accepted votes have to be given on each table and at whose instance that information has been provided to the petitioner that so many votes were improperly accepted or rejected. The serial number of such ballot papers which are alleged to have been improperly accepted or rejected are to be given. Rule 56(3) of the Conduct of Elections Rules, 1961, provides a reasonable opportunity to a counting agent to inspect the ballot paper before the same is rejected. Rule 56(3) of the 1961 Rules reads as under:
"Before rejecting any ballot paper under sub Rule (2), the returning officer shall allow each counting agent present a reasonable opportunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper."

Under Rule 56(4) of the 1961 Rules, it is provided that the returning officer while rejecting a ballot paper would mention in abbreviated from either in his own hand or by means of a rubber stamp the grounds of rejection and would initial such an endorsement. According to learned counsel for respondent No. 1, neither the serial number of the alleged improperly accepted or rejected votes has been given nor tablewise break up of the alleged improperly accepted or rejected votes has been given nor even the exact number of such votes has been given. Only approximate number has been given. Further so far as allegations in para 11(c) (supra) are concerned, no details have been given as to in how many bundles there were 27 votes or 28 votes and in how many bundles; there were 23 or 22 votes. How many votes of the petitioner were allegedly counted for the petitioner and other candidates has also not been given. A rough estimate has been given to suit the petitioner that more than thousand valid votes had not been counted in favour of the petitioner. It was further submitted that u/s 100(1)(d) of the Representation of Peoples Act, 1951, it has to be shown by the election petitioner that by improper reception, refusal or rejection of any votes or the reception of any vote which is void, the result of the election in so far as the returned candidate is concerned has been materially affected. According to the counsel, even if the figures as given by the

petitioner are taken as mentioned in para 11(a)(b) and (c), it cannot be said that the result in so far as the returned candidate is concerned has been materially affected.

8. It was also argued by the learned counsel for the petitioner that in the application for recount given by the petitioner on May 9,1996, before the returning officer, the only grounds mentioned are that no proper decision was taken while rejecting the ballot papers and further while making bundles of the ballot papers, the petitioner''s votes were put at the bottom and the votes of respondent No. 1 were put thereupon resulting in the wrong counting of the votes of the petitioner in favour of respondent No. 1. According to the learned counsel, there was no allegation even in the application for recount that any invalid votes had been accepted in favour of respondent No. 1. So far as the allegation that there was double marking of the seal against the name of the petitioner and Shamsher Singh whose symbol was glass jar and the votes could not have been rejected on that ground, is concerned, the learned -counsel demonstrated while folding the ballot paper as required by the rules that there was possibility of the double marking of the seal just by way of folding and the votes which otherwise had double marking, and not because of the folding had been rightly rejected. reliance was placed upon the authority reported as Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others, , in para 7 whereof it has been observed as under :

"An order for inspection may not be granted as a matter of course: having regard to the instance upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled:

(i) that the petitioners for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

"But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

In para 10 of the same judgment while noticing the facts of the case, it was observed as under:

"(10) In the petition filed by Kidwai the material allegations in support of the claim that there had been improper reception, refusal or rejection of votes were contained in paragraphs 6(H) 6(K) and 12. In paragraph 6(H), it was averred that numerous

ballot papers cast in favour of the petitioner were wrongly included in the "bundles of the respondents-" In paragraph 6(K) it was averred that due to "a deficiency in the supply of sealing ink, marks on ballot papers, though not quite clear, yet the markers clearly indicating the intention of the voters, were wrongly rejected as invalid by the returning officer." In paragraph 12 it was averred that "the petitioner is confident that if the votes actually cast in favour of the petitioner are counted as votes of the petitioner and if the improperly accepted votes which have been counted in favour of other respondents are taken out, and if the ballot papers are correctly sorted, counted and bundled, the respondent No. 1 will be found to have polled less votes as compared to x x petitioner. The petitioner further submits that the result of the Election has been materially affected by the improper acceptance and refusal of votes and by the incorrect sorting, counting and bundling of ballot papers. "These averments in the petition for setting aside the election on the ground of improper acceptance or rejection of votes were vague, and did not comply with the statutory requirements of Section 83(1)(a). Paragraph 12 is deficient in the recital of material facts which must be deemed to be within the knowledge of the petitioner, and merely asserts that if the votes actually cast in favour of the petitioner are counted, the total number of valid votes found in his favour would exceed the number of votes received by Yadav. Having regard to this infirmity the Tribunal was justified in declining to make an order for inspection of the ballot papers unless a prima facie case made out in support of the claim. The Tribunal has undoubtedly to exercise its discretion if it appears to be in the interests of justice, but the discretion has manifestly to be exercised having regard to the nature of the allegations made. The Tribunal would be justified in refusing an order where inspection is claimed with a view to fish out materials in support of a vague plea in the case set out in the petition...."

Learned counsel also cited R. Narayanan Vs. S. Semmalai and Others, , in support of the contention that the relief of recounting cannot be granted on the possibility of there being an error The Court would be justified in ordering recount of the ballot papers only where the election petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded. Further authority relied upon by the learned counsel for respondent No. 1 is Satyanarain Dudhani Vs. Uday Kumar Singh and Others, . In the said case, the High Court of Pataa which had tried the election petition had ordered recount and allowed inspection of ballot papers. As a result of recount and inspection of ballot papers, the High Court came to the conclusion that the election petitioner had polled majority of 26 votes and the High Court allowed the election petition and declared the petitioner elected to the Bihar Legislative Assembly. In spite of the fact that the High Court found on inspection of the ballot papers that the election petitioner should have been declared elected, the apex Court reverted the order of the High Court and held that the order of recount was not correct in law and, therefore, the election petitioner could not have been declared elected. In paras 10

and 11 of the said judgment, it was observed by the apex Court as under :

10. "It is thus obvious that neither during the counting nor on the completion of the counting there was any valid ground available for the recount of the ballot papers. A cryptic application claiming recount was made by the petitioner-respondent before the Returning Officer. No details of any kind were given in the said application. Not even single instance showing any irregularity or illegality in the counting was brought to the notice of the returning Officer. We are of the view 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. We have been taken through the pleadings in the election petition. We are satisfied that the grounds urged in the election petition do not justify for ordering recount and allowing inspection of the ballot papers. It is settled proposition of law 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 b6 maintained and only when the High Court is satisfied on the bais of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered.

11. As stated above only three line objection application was filed before the Returning Officer. No objection whatsoever was raised during the counting and no irregularity cr illegality was brought to the notice of the Returning Officer- Even the material in the election petition has been pleaded with the object of having a fishing enquiry and does inspire confidence."

Learned counsel also cited Jagjit Singh Vs. Dharam Pal Singh and Others, , wherein it was held that if the serial number of the alleged improperly accepted or rejected votes is not given and the reason for that is also given in the election petition that it was not possible under given circumstances to note down the serial numbers, the election petition could not be thrown out on the ground that material facts were lacking. The learned counsel submitted that while giving the above said observation. it was noticed that the number of alleged improperly rejected votes on each table was given and the ground for rejection of those votes had also been given. In paras 10 and 11 of the judgment it was observed as under :

"Similar allegations about improper rejection of votes on the same ground are contained in paragraph 15 regarding rejection of 44 votes relating to Boot No.73 at Table N.1, in paragraph 16 regarding rejection of 110 votes relating to Booth No. 49 at Table No. 1 and in paragraph 17 regarding rejection of 65 votes relating to Booth No. 100 at Table No. 4. In paragraph 34 it is alleged that 13 votes relating to Booth N&.55 were improperly rejected at Table No.7 on the ground that the seal of the, Presiding Officer, which he has to affix to make a vote valid, was so put that the impression was also visible on the front side of the ballot paper and that this could hardly be a ground for rejecting the votes.

11. It would thus appear that in the afore mentioned paragraphs of the election petition the appellant bad set out the number of votes which were improperly rejected, the particular booth to which they related, the particular table at which the said votes were counted and the grounds on which the votes were rejected. All that was lacking was the serial numbers of the rejected ballot papers. Explanation for the said is offered in paragraph 12 of the election petition wherein after referring to the requirement laid down in Rule 56(3) of the Conduct of Election Rules, 1961, it is stated that in view of the seating arrangement at no stage any ballot paper was shown to the agents of the candidates or to the candidates at any stage during the counting. The truth or falsity of this explanation will have to be decided on the basis of evidence that is adduced at the trial. But at this stage the said explanation cannot be ignored."

It was argued by the learned counsel that in the present case, all the material facts which were there in the petition before the apex Court are lacking. The break up of the alleged improperly rejected votes or alleged improperly accepted votes has not been given table-wise. What were the objections regarding the improper acceptance on each table and what were the objections regarding improper rejection of the votes on each table has also not been given. Consequently, according to the counsel, if the detailed facts as mentioned in paras 10 and 11 of the judgment of Jagjit Singh''s ease (Supra) as quoted above are not there, the election petition would be held to be disclosing no cause of action.

9. Further in support of his contention regarding the importance of maintaining secrecy of ballot papers and further regarding the detailed material facts, which are necessary to be given to make the petition triable, reliance was placed on Shri Jitendra Bahadur Singh Vs. Shri Kirshna Behari and Others, . Specific reliance was placed on paras 7, 8 and 10 thereof, which are in the following terms:

"7. The importance of maintaining the secrecy of ballot papers and the circumstances under which that secrecy can be violated has been considered by this Court in several cases. In particular we may refer to the decisions of this Court in Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others, and Dr. Jagjit Singh Vs. Giani Kartar Singh and Others, . These and other decisions of this Court and of The High Courts have laid down certain basic requirements to be satisfied before an election tribunal can permit the inspection of ballot papers. They are (1) that the petition for setting aside the election must contain an adequate statement of the material facts on which the petitioner relies in support of his case and (2) the tribunal must be prima satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary.

8. The trial court was of the opinion that if an election petitioner in his election petition gives some figures as to the rejection of valid votes and acceptance of invalid votes, the same must not be considered as an adequate statement of material facts. In the instant case apart from giving certain figures whether true or

imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the congress nominee cannot afford the necessary basis. He did not say in the petition who those workers were and what is the basis of their information. It is not his case that they maintained any notes or that he examined their notes, if there were any. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as to afford a basis for the allegations made in the petition. The facts stated in paragraphs 13 and 14 of the election petition and in Schedule ''E'' are mere allegations and are not material facts supporting those allegations. This Court in insisting that the election petitioner should state in the . petition the material facts supporting those allegations. This Court in insisting that the election petitioner should state in the petition the material facts was referring to a point of substance and not of mere form. Unfortunately, the trial Court has mistaken the form for the substance. The material facts disclosed by the petitioner must afford an adequate basis for the allegations made.

9. xxx xxx xxx

10. Now coming to the rejection of the votes polled in favour of the congress nominee, under the rules before a vote is rejected the agents of the candidates must be permitted to examine the concerned ballot paper. Therefore, it was quite easy for them to note down the serial number of the concerned ballot papers. The election petition is silent as to the inspection of the ballot papers or whether the counting agents had noted down the serial number of those ballot papers or whether those agents raised any objection relating to the validity of those ballot papers; if so who those agents are and what are the serial numbers of the ballot papers to which each one of them advanced their objections. These again are the material facts required to be stated.''

To the same effect another authority of the apex Court reported as Bhabhi Vs. Sheo Govind and Others, Was also cited. In Chanda Singh Vs. Choudhary Shiv Ram Verma and Others, , the apex Court again emphasised that recount should not be lightly ordered. It will be apposite to notice head note (A) from the reported judgment:-

"Rule 63 of the Conduct of Elections Rules, 1961, obligates the candidate to state'' the grounds on which he demands such recount." It is plain that a mere doubt or small lead or unspecified blemish in the manner of the counting falls short of the needs of the said rule. Under the rule, the demand for recount may be rejected if it appears to the Returning Officer to be frivolous or unreasonable. What is not reasonably grounded or seriously supported is unreasonable or frivolous. Suspicions of possible mischief in the process or likely errors in counting always linger in the mind of the defeated candidate when he is shocked by an unexpected result. The Returning Officer has to be careful, objective and sensitive in assessing

the legitimacy of the plea for rerunning the course of counting. Victory by a very few votes may certainly be a ground to fear unwitting error in count given other circumstances tending that way. If the counting of the ballots are interfered with by too frequent and flippant recounts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying if recount of votes is made easy. The best surmise, if it be nothing more than surmise cannot and should not induce the judge to break open ballot boxes. If the lead is relatively little and/or other legal infirmities or factual flaws hover around, recount is proper, not otherwise. In short, where the difference is microscopic, the stage is set for a recount given some plus point of clear suspicion or legal lacuna militating against the regularity, accuracy, impartiality or objectivity bearing on the original counting, Of course, even if the difference be more than microscopic. If there is a serious flaw or travesty of the rules or gross interference, a liberal repeat or recount exercise, to check on posible mistake is a fair exercise of power. To tarnish the counting staff with bias is easy for any party who divorces means from ends. When the challenger belongs to the party in power a heavy strain is thrown on the strength of the moral fibre of the election staff whose fearless integrity is a guarantee or purity of the whole process but whose fortunes, before and after elections, may be cast with a political government, whose key men may sometimes take disturbingly keen interest in the outcome of the elections and election petitioners. The Court should be reluctant to lend quick credence to the mud of partiality slung at counting officials by desperate and defeated candidates although what is more important is the survival of the very democratic institutions on which our way of life depends.

10. It is not necessary to notice some other authorities cited by the learned counsel for the respondent as the same are almost to the same effect as the one which have already been noticed.

11. On the. basis of the aforesaid authorities, learned counsel for the respondent submitted that in the present case, the grounds which are mentioned in the election petition specifically para 11(a), (b) & (c) thereof do not constitute any cause of action and no roving enquiry can be ordered to be made by directing recount.

12. On the other hand, learned'' counsel for the petition argued that the election petition is to be read as a whole and averments made in para 11(1), (b) and (c) of the election petition have to be read in the background mentioned in the preceding paragraphs of the election petition, the substance of which has already been noticed in the earlier part of the judgment. Learned counsel argued that the Returning Officer showed pronounced bias against the petitioner and a lenient attitude towards the returned candidate (respondent Kartar Devi) resulting in wrong and illegal rejection of votes which were cast in favour of the respondent which in fact were liable to be declared invalid. According to the counsel, various fetters were placed on the counting agents of the petitioner and his election agents as well as on

the petitioner resulting in bungling in counting of votes and preventing the counting agents to know and to note down the details of the illegally and improperly rejected votes which were in fact cast in favour of the petitioner as also to note down the details regarding the illegal and improper acceptance of votes in favour of the respondent which infact should have been declared invalid. Despite these factors, full material facts and particulars have been given in the election petition and the serial number of the ballot papers which were illegally rejected or accepted could not be noted down because of the fact that the agents were not allowed to take any pen or pencil inside where the counting was going on and further they were kept at quite a distance from the counting table depriving them the opportunity to note down the serial number of the illegally accepted and rejected votes. It was further argued that it is not necessary that all the grounds which are mentioned in the election petition for claiming recount must also find mention in the application for recount which was given to the Returning Officer at the time of counting for claiming recount. In the application for recount given to the Returning Officer, two grounds are mentioned, that is, of wrong rejection of votes and making of wrong bundles of votes for the purpose of counting. It is not very material if the other ground of illegal acceptance of votes in favour of the petitioner is not mentioned in the application given to the Returning Officer as all the details cannot be mentioned in a short time that is available at the time of counting. It was further argued that by mere fact that how many votes were illegally accepted or rejected at each table the election petition cannot be thrown out as it is not necessary to be given. The total number of illegally accepted or rejected votes have been given which is sufficient compliance with law. In any case no prejudice has been caused to the petitioner by not mentioning the number of votes allegedly improperly accepted or rejected at each table. Similar was the argument regarding non-furnishing of the number of bundles which were wrongly made for the purpose of counting in which the petitioner''s votes were put in the bundles of the other candidates. Learned counsel cited Arun Kumar Bose Vs. Mohd. Furkan Ansari and Others, to contend that where in an election petition the number of wrongly rejected ballot papers had been furnished, counting table number was given, grounds for rejection were also pleaded but only particulars of ballot papers were not given as they were not available during counting it s held that pleadings set out material facts and no defects could be found with the same. Brij Sunder Sharma Vs. Shri Ram Dutt and Others, was also, cited, in which reliance was placed on 22 E L.R. (SC) 288 . It may be observed here that 22 ELR. (SC) 288 was considered by the Supreme Court in Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others, to which reference has already been made while mentioning with the arguments of the learned counsel for the respondent. Learned counsel also cited Subhan Khan Vs. J.H. Patel, in support of the contention that the jurisdiction of the High Court is not only confined to the grounds raised in the application for recount given to the Returning Officer at the lime of counting. In para 25 thereof, it was observed as under:

"It is clear from the above decision that the jurisdiction or power of the High Court while trying an election petition is not confined to the ground raised before the Returning Officer and the Court is entitled to consider any ground in support of the petitioner''s case that his nomination paper was improperly rejected even if it were not raised before the Returning Officer. It is also pertinent to note that at the relevant time, Election Petitions were being tried by the Tribunal and in that context, the word "Tribunal" is used in the judgment."

Learned counsel also cited N.E. Horo Vs. Leander Tiru and Others, wherein it was held that where inspection of all ballot papers polled in favour of elected candidate was ordered and some ballot papers found to be not having prescribed mark of rubber stamp of particular booth the same could be rejected during inspection despite there being no specific allegation in the pleadings in respect of such ballot papers.

13. In the light of the law cited by the counsel for the parties as noticed above and the arguments addressed, let us examine the pleadings of the election petitioner. From para 4 onwards to para 10-A, the main thrust in the petition is that respondent No. 1 was the Excise and Taxation Minister and remained as such from 1993 to 1994 and during the course of elections, she was the Health Minister in the State of Haryana and was enjoying good amount of clout with the bureaucracy. Mr. Ishwar Singh, who was the Political Secretary of respondent No. 1, was appointed as her election agent in the election and the Returning Officer had detailed officers and officials mostly of the Excise and Taxation Department and Industries Department on election duty for counting votes of the election in question. Most of them belonged to the caste of respondent No. 1. This was done with a design to help respondent No. 1 during the course of voting and counting. The counting tables were put in a wiremesh enclosure and the distance between the counting table and the first bench outside the wiremesh was about 3 ft. and the next bench was at about 1-1/2 ft. from the first bench and so on and, therefore, it was not possible to see exactly what was going on inside the wiremesh while counting. In other words it was not reasonably possible to know the serial number of votes which were illegally accepted or rejected. The Returning Officer had allowed the police within the wiremesh enclosure just to create awe and fear. The counting agents sitting on the third bench were not able to the seal mark on the ballot papers properly because of the distance and also because of the obstruction. The counting agents were not allowed to take in any pen or pencil to note down the serial number etc. of the votes which were illegally rejected or accepted.

14. In para 11 of the petition it has been averred that after all the ballot boxes were brought from the strong room, they were opened and the ballot papers from all the booths were mixed up together and bundles of thousand votes each were made which continued till about 5 PM on May 8, 1996, and the counting started at that time by distributing 1000 votes on each table from table No. 1 to 7. At that time, the

candidates and their election agents were not prohibited from entering into the counting arena and were free to move and patrol about in the counting arena,, The petitioner was there at the time of counting of first round. It was seen that one of the counting assistances put two valid votes of the petitioner in the heap of rejected votes. The petitioner objected to the same and in the process, another counting as sistant put another valid vote of the petitioner in the heap of rejected votes. There was commotion ana scuffle. The Returning Officer checked the votes and okayed the valid votes and the valid votes were put in the heap of the petitioner and the dispute was fettled. Then comes that averment that on the first round on table No.7, Shri R.S. Sehrawat, counting supervisor, was putting 27 votes instead of 25 votes in the bundle of the petitioner and the dispute erupted over this matter. He felt sorry for the same. On tables No. 1, 4 and 7 in the first round, bundles of 26, 27 and 28 votes instead of 25 votes were being made. One Ram Chander, an election agent of the petitioner, reported the matter. There was a wordy dual on tables No. 1, 4 and 7. The bundles were recounted and the mistake was detected. The matter was hushed up as a case of accidental error. Then are the allegations that the valid votes on which there were seal impressions in favour of the petitioner were being rejected as invalid on the ground of double marking, as opposite to the name of the petitioner, there was a seal impression on the glass jar. Some of the valid votes in favour of the petitioner were being considered for respondent No. 1. The details of these allegations are given in paras 11(a), 11-(b) and 11-(c) of the election petition. The question that arises is even assuming the allegations made in paras No. 4 to 10 of the election petition to be correct that some numbers of the counting staff were biased against the petitioner and were supporting respondent No. 1 what has to be seen is as to what they actually did at the time of counting as per the averments made in the petition. It cannot be held that simply because if it is assumed that the election staff was biased, recount must be ordered. As observed above, it has to be actually seen what harm, if any was caused to the petitioner or the help rendered to the returned candidate.

15. In para 11(a) of the petition, it has been mentioned that 2364 votes in all had been rejected in which, as per that estimate/calculation given by the counting agents on all the tables and also by his own estimate and calculation, nearly 600 votes of the petitioner had been rejected on illegal grounds. One of the grounds is double impression. Then it is further said that the main ground of rejection of valid votes of the petitioner has been alleged double impression on the symbol of the petitioner on the ballot paper. It has further been averred that the alleged double impression was in fact not double impression but it was due to the folding of the ballot paper which brought about the impression on the glass jar opposite the symbol of lotus allotted to the petitioner.

16. It would be seen from the above that according to the estimate of the petitioner and the estimate and calculations given by the counting agents of the petitioner, about 600 votes of the petitioner had been illegally rejected. It is further mentioned

that the main ground of rejection was alleged double marking. It has not been mentioned at all as to what were the grounds of the alleged illegal rejection of votes and what was the number of rejection of votes on other grounds as also on the ground of alleged double seal impression. It has further not been given as to how many votes on each table were rejected and on what ground "No details are forth coming. Even assuming for the sake of arguments that the petitioner or his counting agents could not know the serial number of the ballot papers which were allegedly illegally rejected, in my view even if the averments are taken on the face value, nothing prevented the counting agent of the petitioner to see as to how many votes were being rejected on each table and on what grounds. If such details were given atleast respondent could be put on guard and could have cross checked from the relevant Form as to how many votes were rejected on each table and on what grounds. Sup posing the counting agent was to say that 100 votes were rejected at a particular table and the relevant Form filled in by the Returning Officer was to show that only 80 votes were rejected, then obviously the agents were not telling the factual position. In the present case, the Factual position is totally lacking. According to me, this paragraph does not answer the requirements of Section 83 of the Representation of Peoples Act as it does not contain the concise statement of material facts. Rule 56(2) of the Conduct of Election Rules, 1961, gives the ground on which the Returning Officer would reject the ballot paper and further Rule 56(3) provides that before rejecting any ballot paper under Sub Rule (3) of Rule 56, the returning Officer shall allow each counting agent a reasonable opportunity to inspect the ballot paper and Rule 56(4) states that the Returning Officer would also mention the ground of rejection, may be, even in abbreviated form. Rule 56(2) of the Conduct of Election Rules is in the following terms :
"(2) The returning officer shall reject a ballot paper-

(a) if it bears any mark or Writing by which the elector can be identified, or

(b) if it bears no mark at all or, to indicate the vote, it bears a mark elsewhere than on or near the symbol of one of the candidates on the face of the ballot paper or, it bears a mark made otherwise than with the instructions supplied for the purpose, or

(c) if votes are given on it in favour of more than one candidate, or

(d) if the mark indicating the vote thereon is placed in such manner as to make it doubtful to which candidate the vote has been given, or

(e) if it is a spurious ballot paper, or

(f) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established, or

(g) if it bears a serial number, or is of a design, different from the serial numbers, or, as the case may be, design, of the ballot papers authorised for use at the particular

polling station, or

(h). if it does not bear (both the mark and the signatures) which it should have borne under the provisions of Sub-rule (1) of Rule 38:

Provided that where the returning officer is satisfied that any such defect as is mentioned in clause (g) or clause (h) has been caused by any mistake or failure on the part of a presiding officer or polling officer, the ballot paper shall not be rejected merely on the ground of such defect:

Provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked."

It would be seen that there are many grounds of rejection of ballot papers and the ground of rejection has to be even endorsed on the ballot paper. It cannot be imagined that the counting agents could not even know as to what were the grounds of rejection and how many votes were rejected on each count. Even otherwise the dummy ballot paper attached as Annexure P-1 with the election petition would show that if the ballot paper is folded as was required, there could not be even double impression of the seal which was put in favour of the petitioner which could leave an impression on folding on the glass jar.

17. In para 11(b) of the election petition, the details of the alleged illegal acceptance of votes in favour of the .respondent have been mentioned. It has been averred that the votes having ink spot, ink lining and ink-smudge etc. on the open hand symbol of respondent N . 1 ought to have been rejected on the ground that it did not bear the seal impression supplied for marking the ballot paper. These were about 200. This illegal acceptance of 200 votes in favour of respondent No. 1 and about 600 invalid rejection of votes cast in favour of the petitioner has been the handiwork of the counting staff which was allegedly helping respondent No. 1. Again the details which were required to be given as to on which table and how much votes were illegally accepted in favour of respondent No. 1 have not been referred to above, it'' is clearly mentioned that may be in a given case, it may not be possible to give the serial number of the alleged illegally rejected or accepted votes but in each of the cited case, the details as to how many votes were illegally accepted or rejected at each table and the grounds thereof were clearly given.

18. In para 11-(c) of the petition, it has been mentioned that on tables No.7, 4 and 1, in the first round of counting on a couple of occasions, 27/28 valid votes of the petitioner were put in the bundle of the petitioner and in the bundle of respondent No 1 there was only 23/22 votes. In other words, 27/28 votes of the petitioner were being counted as 25 whereas 23/22 votes of respondent No. 1 were counted as 25 votes. It may be observed here that in para 11, it has been mentioned that on tables No. 1, 4 and 7 in the first round, bundles of 26, 27 and 28 votes instead of 25 votes

were being made and when this mistake was pointed out, the same was rectified. However, in para 11-(c), it is stated that this trend/lilegality/irregnlarity was committed throughout the counting and as per the estimate/calculation of the petitioner given by his counting agents, on the various tables more than 1000 valid votes had not been counted in favour of the petitioner. According to me, the allegations made in this, para are the vaguest and do not give the material facts and particulars. The number of bundles which contained 27 or 28 votes which were counted as 25 in favour of the petitioner and also the number of bundles containing only 22 or 23 votes which were counted as 25 in favour of respondent No. 1 has not been given. It has further not been given as to how many bundles were there of other candidates in which allegedly the petitioner''s valid votes were put. As observed above in para 11, of the petition, it has been stated that 26, 27 and 28 votes were being counted as 25 in favour of the petitioner whereas bundle of 26 votes has not been mentioned in para 11-(c) of the petition. As to how the estimate of thousand votes counted in that manner has been reached is also not clear. It looks that the petitioner is wanting a roving enquiry to be made by this Court and to find out if there are any bundles containing more or less votes as mentioned in this para Once the number of bundles is not mentioned, the details of thousand votes are also not given as to how this figure has been reached and which counting agent gave what number of bundles that contained 27/28 votes or for that matter, 23/22 votes has not been given. According to me, para 11-(c) of the petition has totally to be ignored for all purposes.

19. The case can be looked from another angle. Respondent No. 1 had polled 16,733 votes. As per the allegations in para 11(b) of the petition, approximately 200 votes were illegally accepted in favour of respondent No. 1. Approximately 200 votes could be 190 or 210. Assume it to be 250 and if 250 is deducted, even than respon dent No. 1 would get 16,483 votes. On the same parity, as per allegations in para 11(a), approximately 600 votes in favour of the petitioner were illegally rejected. This number would be 590 or 610. Take it at the highest that 650 votes of the petitioner were illegally rejected. The petitioner had secured 15,818 votes and by adding even 650, he would get 16,468 votes. This would not materally affect the result of the election.

20. Another aspect should not be lost'' sight of. No doubt, the petitioner can challenge the election on all possible grounds and is not confined to the grounds raised in an application for recount given before the Returning Officer. But that would go a long way to show as to whether the prayer for recount now is well bases or not. In the application given for the recount before the Returning Officer, which has been appended as Annexure P-4, only two grounds have Been mentioned, i.e., wrong rejection of votes and incorrect making of bundles of votes. The ground of illegal acceptance of votes in favour of the respondent is not at all mentioned. For all these reasons as mentioned above and applying the law as laid down by the apex Court, which has been referred to in the earlier part of the judgment. I am of the

view that the petition lacks material facts and particulars as envisaged by Section 83 of the Representation of Peoples Act and no roving enquiry can be ordered to be made even by taking the facts mentioned in the petition to be correct. Consequently issue No. 1 is decided in favour of respondent No. 1.

21. So far as issue No.2 is concerned as to whether allegations made in para 10-A of the election petition lack material particulars, it may be observed that the said para only makes averments regarding staff which was deputed for the election duty and that they were trying to help respondent No. 1. Whatever worth the allegations made be. I find that under the circumstances it cannot be said that it does not give material particulars. So this issue is decided against respondent No. 1.

22. In view of the above, I am of the view that the petition lacks material facts and does not disclose any cause of action and is hereby dismissed with costs. Costs are assessed at Rs. 2,500/-.