**(2006) 144 PLR 512 : (2006) 3 RCR(Civil) 820**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** First Appeal from Order No. 392 of 2005

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| Gurnek Singh | | APPELLANT |
| | Vs | |
| Surinder Singh and Others | | RESPONDENT |

**Date of Decision:** July 5, 2006

**Acts Referred:**

- Punjab Panchayati Raj Act, 1994 - Section 76, 89

**Citation:** (2006) 144 PLR 512 : (2006) 3 RCR(Civil) 820

**Hon'ble Judges:** J.S. Narang, J

**Bench:** Single Bench

**Advocate:** M.S. Cheema, for the Appellant; Ranjana Shahi, for the Respondent

**Judgement**

J.S. Narang, J.
In the instant appeal order dated November 25, 2004, passed by the Additional Deputy Commissioner/Election Tribunal, Ropy, exercising the powers under the Punjab Panchayati Raj, 1994 (hereinafter referred to as "the Act"), has been challenged.

2. The facts need to be noticed are that State of Punjab issued declaration to hold election of Gram Panchayats in the entire State of Punjab in the year 2003. The date notified for the elections was June 29, 2003. The appellant, as also Surinder Singh, respondent No. 1 filed their nomination papers for the office of Sarpanch of Village Bhago Majra with Hadbast No. 210 of District Ropar. The nomination papers were found in order and both the aforesaid persons contested the election. The votes were polled and upon counting thereof, it was found that the appellant secured 261 votes and respondent No. 1 i.e. Surinder Singh secured 260 votes. Resultantly, the appellant was declared elected as Sarpanch by one vote. Respondent No. 1 was not satisfied with the election process and resultantly insisted upon recount of the votes at the relevant time, which was carried out three times and every time the votes counted came out to be the same. Still not satisfied, respondent No. 1 filed election petition u/s 76 read with Section 89 of the Act and the

rules made thereunder. The petition was contested by the appellant by way of submitting a detailed reply by controverting the allegations accordingly.

3. Upon the pleadings of the parties the following issue was framed:

Whether the election of the respondent is liable to be set aside on the basis of allegations leveled against him?

4. The Tribunal examined the evidence and has held that the polling of votes, as mentioned in para No. 2, pertaining to Village Bhago Majra were also cast at the same time as in Village Manoli-Ward No. 10, Ropar and Village Sohara, Village Maal Majra, Teshil Samrala, Village Sohara, Village Maal Majra, Tehsil Samrala, Village Kakrala Khurd, Tehsil Samrala, therefore, the voters who has cast votes at Bhago Majra have not been proved to be the voters of that village but have been proved to be the voters of another village. It has been noticed that the votes of said voters, as indicated in the petition, existed in Village Bhago Majra at Sr. Nos. 77, 135, 182, 193, 204, 206, 207, 209, 235, 236 and 378. It has been observed that except for the vote No. 235 all other aforesaid votes had been polled from which it is proved that the voters existing in Village Bhago Majra were also the voters in other villages, which fact could not be denied by the returned candidate. It has been assumed that the same must have been polled in his favour because this averment has not been specifically denied. It has been held that in view of the allegations and the vote having been polled, as alleged in the petition, it stands established that the election process has been polluted and this would amount as a setback to the confidence of the people. Resultantly, the election petition has been allowed by placing reliance upon a judgment of the Hon''ble Supreme Court rendered in re: 2004 (2) ACJ 668 and declaring respondent No. 1 as elected candidate.

5. Learned Counsel for the appellant has argued that the Tribunal has not discussed the evidence in the right and correct perspective and has concluded purely on the conjecture that the votes cast by such persons must have been polled in favour of the returned candidate. It has been further argued that if all the duplicate votes are taken out from being counted for ascertaining the result, even then the returned candidate would have to be declared successful by, one vote. It has not been held by the Tribunal that the votes could have been cast in favour of respondent No. 1 i.e. petitioner before the Tribunal. The appellant could not have been declared as unsuccessful if any vote out of the aforesaid votes could have been taken as cast in favour of the respondent No. 1. Thus, by all counts, the appellant would have to be declared as rightfully elected candidate. It is nowhere the case of respondent No. 1 that the aforesaid votes, though wrongly polled, were polled in his favour. However, to the contrary the stand taken is that these votes have been cast in favour of the respondent-appellant. There is no evidence to corroborate that these votes were cast in favour of the petitioner. The Tribunal has made this observation purely on conjectures.

6. Learned Counsel for the respondent has argued that casting of votes in an illegal manner has been duly established. It has also been established that these persons supported the returned candidate and had cast their votes illegally. She has placed reliance upon a judgment of the Hon"ble Supreme Court A. Neelalohithadasan Nadar Vs. George Mascrene and Others, wherein it has been held that double voting specifically pleaded both by respondent election petitioner in his petition as well as by appellant elected candidate in his recrimination petition-inspection of marked copies of electoral rolls and counterfoils orally allowed by High Court to facilitate evidence of witnesses, would be enough to draw the conclusion that the elections process was polluted and it is a set-back to the confidence of the people.

7. I have heard learned Counsel for the parties at length and have also perused the paper book. I am of the opinion that the Tribunal has not been able to cull out categorically any evidence from which it could be inferred that the votes cast at Village Bhago Majra by the residents of other villages could be said to have been cast in favour of the returned candidate. It is merely the conjecture on the basis of which it has been assumed that such votes were cast in favour of the returned candidate. This objection could have been raised. It is also discernible from the discussion and observations made by the Tribunal that the votes were recounted three times but the result remained the same. This was not enough of a reason to hold that the votes could be said to have been cast in favour of the returned candidate. However, the factual position that the persons who had cast votes projecting themselves to be residents of Village Bhago Majra, were in fact residing in some other villages and they are said to have cast votes in their own villages as well. It is obvious that the respective voters lists were necessarily required to be challenged at the time when the votes were being cast. No such plea seems to have been taken in this regard at the relevant time as nothing had been brought on record that any objection in this regard was raised by the defeated candidate or by any other person. However the fact that the votes had been cast by the person, indicated above against Sr. Nos. 77, 135, 182, 193, 204, 206, 207, 209, 235, 236 and 378, at two places, this would be enough to hold that the election process was polluted and it does bring a set back to the confidence of the people exercising their right of a voter in a democratic system. The basic principle of democracy cannot be ignored i.e. the election has to be held in a fair and proper manner, no one is entitled to exercise the voting right twice over in the present system where one of the candidate has to be elected from/by the persons of the area where they are residing.

8. The appellant has not been able to address any meaningful argument that the finding returned by the Tribunal to the effect that the voters of other villages were also shown as voters in Village Bhago Majra at Sr. Nos. 77, 135, 182, 193, 204, 206, 207, 209, 235, 236 and 378 suffers from any factual error or any illegality and infirmity. The report was called and it has been found as a matter of fact that except vote No. 235 all other votes had been polled from which it stands corroborated that the voters residing in village Bhago Majra were also voters in other villages and they had also cast their votes accordingly.

This fact could not be denied specifically by the appellant and no counter evidence has been produced before the tribunal that though said person have been shown to be voters in other villages but they have not cast their votes in those villages. However, the Tribunal could not have drawn inference against the returned candidate that those votes must have been cast in favour of the petitioner. This could have been inferred vice versa as well i.e. the votes could be taken to have been cast in favour of the election petitioner. If that be so, the election petitioner should not have been declared elected by the Tribunal by non-suiting the appellant accordingly. The only course open to the Tribunal was to declare the re-election in view of the fact that the double casting of the votes by the same persons has been established but it is not discernible to whom such votes have been cast. This fact cannot be looked into or determined as the secrecy of casting of votes has to be maintained. In view of aforesaid status derived at the election petition has been rightly accepted and the election has been set aside. But, the Tribunal has exceeded its jurisdiction in declaring the election petitioner as successful candidate.

In view of the above, the petition is partly accepted and the declaration that respondent No. 1 shall stand elected is set aside. It is directed that the election be held de novo in accordance with law.