

(83) As a result of the above conclusions, we find no merit in these writ petitions. These are dismissed. However, in the circumstances of these cases, we make no order as to costs.

S.C.K.

Before Hon'ble Ashok Bhan, J.

SURJIT KAUR,—Petitioner.

versus

SURJIT KAUR AND OTHERS,—Respondents.

C.W.P. No. 17087 of 1994.

January 16, 1995.

Constitution of India, 1950—Arts. 226/227—Election—Recount of votes—Interim order of High Court enabling petitioner to make representation before Deputy Commissioner—Deputy Commissioner ordering recount without taking any evidence and without affording opportunity of hearing to elected candidate—Such order is liable to be set aside—Deputy Commissioner ordered to decide application for recount after hearing petitioner keeping in view law laid down by Supreme Court in Satya Narain Dudhani's case.

Held, that the Deputy Commissioner without taking any evidence and even prior to the filing of the written statement, ordered the recount presumably with the impression that the High Court in C.W.P. 15125 of 1994 had directed him to order a recount as and when a representation is filed before him claiming a recount. High Court in its order has only directed that the petitioner may file a representation to the Deputy Commissioner claiming a recount, who may consider the same and decide before the election of the Chairman. Block Samiti, Sunam, District Sangrur takes place. This did not imply that the Deputy Commissioner could dispose of the application for recounting the votes summarily without affording proper opportunity to the petitioner. From the perusal of the orders Annexure P-7 and P-8 it is evident that the petitioner had not been afforded any opportunity before ordering the recount of votes.

(Para 6)

Further, held that the impugned orders are liable to be set aside. The case is remitted back to the Deputy Commissioner, Sangrur, to re-decide the same keeping in view the law laid down by the Supreme Court in Shri Satyanarain Dudhani's case.

(Para 7)

M. S. Khaira, Sr. Advocate, with K. S. Bakshi, Advocate, *for the Petitioner.*

Amarjeet Markan, Advocate, *for the Respondent.*

JUDGMENT

(1) Elections for the membership of Block Samiti Zone 10, Village Gujran, Tehsil Sunam, District Sangrur were held on 1st October, 1994. Surjit Kaur wife of Shaminder Singh, petitioner (hereinafter referred to as 'the petitioner') was declared elected. There were two candidates by the name of Surjit Kaur who contested those elections. The name of the other candidate was Surjit Kaur wife of Jagroop Singh, respondent (hereinafter referred to as 'the respondent'). Respondent filed an Election Petition with the designated authority the Deputy Commissioner of District Sangrur, on 16th October, 1994 stating therein that the votes polled by her had been counted in the count of the petitioner. She claimed a recount. Notice of the Election Petition was issued to the petitioner for 26th October, 1994.

(2) In the meantime, respondent filed C.W.P. 15125 of 1994 in this Court during the Dussehra holidays, which was put up before a Single Bench of this Court. Learned Single Judge on 17th October, 1994, passed the following order :—

"To be put up before the Motion Bench on 27th October, 1994. Counsel states that there is an error in the counting of votes. Petitioner, if so aggrieved, may make representation in this regard to the Deputy Commissioner who may consider the same before the election of Chairman, Block Samiti, Sunam, District Sangrur.

Copy of this order be given dasti, attested under the signatures of Additional Registrar (Judicial) of this Court."

(3) Armed with this order of the High Court, respondent filed an application before the Deputy Commissioner claiming an immediate recount. In this application, notice was again issued to the petitioner for 26th October, 1994 by the Deputy Commissioner, on which date the reply to the application was filed by the petitioner, which has been annexed as Annexure P-6 with this writ petition. In the reply, the petitioner had stated that the matter regarding recounting of votes could only be decided in the Election Petition pending and not in the application filed by the respondent. The case was adjourned to 31st October, 1994 and thereafter, to 7th November, 1994 because the Deputy Commissioner did not take up the case on 31st October, 1994. On 7th November, 1994 the Deputy Commissioner passed two

orders Annexures P-7 and P-8, which have been impugned in this writ petition. The Deputy Commissioner, without taking an evidence or taking into consideration the pleadings of the parties, ordered the recount. The Sub Divisional Officer (Civil), Sunam was directed to recount the votes on the same day at 3.30 P.M. with the help of the Tehsildar, Sunam, who was the Presiding Officer. Recounting was done and,—vide order Annexure P-8, the respondent was declared elected.

(4) Petitioner being aggrieved against the orders Annexures P-7 and P-8 has filed the present writ petition, challenging the same *inter alia* on the ground that recount could not be ordered without giving opportunity for filing of written statement of the parties, ordered the recount. The Sub Divisional Officer (Civil), Sunam was directed to recount the votes on the same day at 3.30 P.M. with the help of the Tehsildar, Sunam, who was the Presiding Officer. Recounting was done and,—vide order Annexure P-8, the respondent was declared elected.

(5) Petitioner being aggrieved against the orders Annexures P-7 and P-8 has filed the present writ petition, challenging the same *inter alia* on the ground that recount could not be ordered without giving opportunity for filing of written statement to the Election Petition, framing of issues and leading of evidence and giving proper opportunity to the parties to prove their case. Allegations of *mala fide* have also been alleged against the respondents. Counsel for the petitioner has placed reliance upon a judgment of the Supreme Court in *Shri Satyanarain Dudhani v. Uday Kumar and others*, wherein their Lordships of the Supreme Court have held that in the absence of any contemporaneous evidence to show any irregularity or illegality in the counting, the recount cannot be ordered. The observations made by the Supreme Court in *Shri Satyanarain Dudhani's case (supra)* in para 16 are reproduced below :—

“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 crystal 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 a single instance showing any irregularity or illegality in the counting was brought to the notice of 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 ballot papers cannot be permitted to be tinkered rightly. An order of recount cannot be granted at a matter of course. The secrecy of the ballot papers has to be maintained and only when the High Court is satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered.

(6) In this particular case, the Deputy Commissioner without taking any evidence and even prior to the filing of the written statement, ordered the recount presumably with the impression that the High Court in C.W.P. 15125 of 1994 had directed him to order a recount as and when a representation is filed before him to claiming a recount. High Court in its order has only directed that the petitioner (respondent herein) may file a representation to the Deputy Commissioner claiming a recount, who may consider the same and decide before the election of the Chairman, Block Samiti, Sunam, District Sangrur takes place. This did not imply that the Deputy Commissioner could dispose of the application for recounting the votes summarily without affording proper opportunity to the petitioner. From the perusal of the orders Annexure P-7 and P-8, it is evident that the petitioner had not been afforded any opportunity before ordering the recount of votes.

(7) Accordingly, we accept this writ petition and set aside the orders Annexure P-7 and P-8. The case is remitted back to the Deputy Commissioner, Sangrur to re-decide the same keeping in view the law laid down by the Supreme Court in *Shri Satyanarain Dudhani's case (Supra)*. Parties are directed to appear before the Deputy Commissioner, Sangrur on 25th January, 1995. On this date, the petitioner shall file her written statement and the Deputy Commissioner, thereafter, shall proceed with the matter on day to day basis whenever convenient to him. The Deputy Commissioner is directed to finalise the proceedings regarding recount by the end of February, 1995. Parties are directed to co-operate with the Deputy Commissioner in the final disposal of the petition for recount by producing their evidence at their own risk and responsibility. However, this direction regarding

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production of evidence shall not apply to the official witnesses who have to appear with the official record.

There will be no order as to costs.

R.N.R.

Before Hon'ble Ashok Bhan, J.

THE OFFICIAL LIQUIDATOR ATTACHED TO PUNJAB AND
HARYANA HIGH COURT,—*Complainant.*

versus

SURJIT SINGH AND OTHERS,—*Accused.*

Company Petition No. 32 of 1991.

In Company Petition No. 49 of 1987.

February 2, 1995.

Companies Act, 1956—S. 545—Non-compliance of S. 454(1)—Company wound up under orders of Court—Statement of Affairs not filed within 21 days by ex-directors of Company—Such statement could not be filed as all assets taken over by Punjab Financial Corporation prior to winding up order—Whether liable for prosecution—Under section 454(1) of the Act—Held that there was a reasonable excuse u/s 454(5) for not filing statement of affairs by accused—No case made out.

Held, that it has not been proved that the books of accounts were available with the directors which they had failed to produce before the Official Liquidator. Section 454 of the Act provides that the statement of affairs has to be in the prescribed form verified by an affidavit.

(Para 12)

Further, held that it has to be on solemn affirmation saying that the statement made and the several lists annexed with it are true and complete statements as to the affairs of the company to the knowledge and belief of the person filing the same. Company was ordered to be wound up on 15th July, 1988 and the Official Liquidator took over on 3rd August, 1988. On this date, possibly the accused could not file the statement as prescribed in Form 57 read with Section 454 of the Act and Rule 127 of the Rules as the Assets of the Company had already been taken over by the PFC and the property of the company in liquidation having been already sold. In my view, there was a reasonable excuse with the accused not to file the statement of