

AZMAT KHAN

v.

KHILLAN SINGH & OTHERS

November 8, 1983

[S. MURTAZA FAZAL ALI AND E.S. VENKATARAMIAH, JJ.]

Representation of the People Act, 1951—Sec. 97—Recrimination Petition—Necessity and effect of.

The appellant, who was a returned candidate, filed a recrimination petition in the election petition filed by the first respondent and another. As a result of the recount to which all the parties had agreed, the High Court declared the first respondent as elected. Hence this appeal.

Dismissing the appeal.

HELD : The case of *Jabar Singh v. Genda Lal* on which the appellant relies is of no assistance to him because the facts of the present case are clearly distinguishable from that case. In that case the returned candidate did not recriminate as provided under sec. 97 of the Representation of the People Act, 1951. In the instant case, the appellant had admittedly recriminated and in the recrimination petition one of the grounds taken related to the errors committed at the time of the counting of votes of the 1st respondent by the Returning Officer. The appellant had also agreed to the recounting of the votes secured by all the parties. [796 E-G]

Jabar Singh v. Genda Lal, [1964] 6 S.C.R. 54, referred to and distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 236 of 1983.

From the Judgment and Order dated the 11th January, 1983 of the Punjab and Haryana High Court in Election Petition No.2 of 1982.

M. C. Bhandare and Prem Malhotra for the Appellant.

Hardev Singh and R. S. Sodhi for the Respondent.

The Order of the Court was delivered by

FAZAL ALI, J. This election appeal arises out of the election held in 1980 from the constituency No. 56 called Hathin to the

A Legislative Assembly of the State of Haryana. At the counting held
by the Returning Officer, the Appellant secured 12,828 votes whereas
respondent No. 1 Khillan Singh got 12,655 votes and one Ramjilal
got 12,213 votes. Accordingly the appellant was declared as elected.
B Aggrieved by the result of the election, Khillan Singh and Ramjilal
filed election petitions in the High Court. In the course of the
election petition, the appellant filed a recrimination petition in which
one of the grounds related to the errors committed in the counting
of votes of respondent No. 1. All the parties agreed that the court
should order a recount and that the parties would be bound by the
result of the recount. The recount was accordingly held as a result
of which Khillan Singh respondent No. 1 got 12,751 i.e. the highest
C number of valid votes and the appellant got 12,698 votes. In view
of the higher votes secured by Khillan Singh respondent No. 1 at the
recount ordered by the High Court, his petition was allowed, the
election of the appellant was set aside and Khillan Singh was declared
as elected. This appeal is filed against the decision of the
D High Court.

In support of the appeal, Mr. Bhandare with the usual inge-
nuity pressed only one point before us. He submitted on the basis
of the Judgment of this Court in *Jabar Singh v. Genda Lal*⁽¹⁾ that
even if the result had gone in favour of respondent No. 1 he could
not have been declared elected. We have gone through this authority
E and we find that the facts of the present case are clearly distinguish-
able. In the decision referred to above the returned candidate did not
recriminate as provided under section 97 of the Representation of the
People Act, 1951 and this was the important ground on which the
Court said that it could not make any attack against the alternative
claim made by the petitioner. In the instant case, the appellant had
F admittedly recriminated and in the recrimination petition one of the
grounds taken related to the errors committed at the time of the
counting of votes of the 1st respondent by the Returning Officer.
The appellant had also agreed to the recounting of the votes secured
by all the parties. In these circumstances, this case does not appear
G to be of any assistance to the appellant. The decision of the High
Court is in accordance with the result of the recount ordered by it.

H For the foregoing reasons, the appeal is dismissed but in the
circumstances of the case there will be no order as to costs.

H.S.K.

Appeal dismissed.

(1) [1964] 6 S.C.R. 54.