

(2021) 01 SHI CK 0211
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 11 Of 2021

Anita

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 07-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Himachal Pradesh Panchayati Raj (Elections) Rules, 1994 — Rule 15, 17, 24, 32
Evidence Act, 1872 — Section 35, 114(e)

Citation : (2021) 01 SHI CK 0211

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Manik Sethi, Neeraj Kumar Shashwat, Ashok Sharma, Vinod Thakur, Vikas Rathor, Seema Sharma, Bhupinder Thakur, Yudhvir Singh Thakur, Ajeet Singh Saklani

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Aggrieved by the non-inclusion of his name in the Voter List, the petitioner has filed the instant petition for the grant of following substantive

reliefs:-

â??a) That the respondent may kindly be directed to enroll the name of petitioner into the electoral list with immediate effectâ??

b) That the petitioner may be given opportunity to file her nominationâ?? .

2. It is well settled proposition of law that inclusion or exclusion of name in the Voter List cannot be termed as an extraordinary circumstance

warranting interference of the High Court in exercise of the jurisdiction under Article 226 of the Constitution. However, it is always open to a person

whose name is not included in the Voter List to avail the benefit by filing election petition as the authorities constituted have wide powers to cancel,

confirm and amend the election and it can also direct to hold fresh election, in case, the election is eventually set aside.

3. No doubt, in extraordinary and exceptional circumstances, the High Court can entertain writ petition under Article 226 of the Constitution where the

order is ultra vires or nullity and/or ex facie without jurisdiction. The exclusion or inclusion of name in the Voter List cannot be termed as

extraordinary circumstance warranting interference by the Court under Article 226 of the Constitution and such question at best are to be decided in

election petition.

4. In addition to the above, a specific and time bound remedy is provided to an aggrieved person under Rule 24 of the Himachal Pradesh Panchayati

Raj (Elections) Rules, 1994, when a person name is not included in the electoral roll.

5. Rule 24 of the Himachal Pradesh Panchayati Raj (Elections) Rules, 1994, reads as under:-

24. Inclusion of names in the electoral roll, finally published.- (1) Any person, whose name is not included in the electoral roll shall make an

application, in Form-2 (in duplicate), to the District Election Officer (Panchayats) for inclusion of his name in that electoral roll, and such application

shall be accompanied by a fee of rupees two to be paid in cash against receipt.

(2) District Election Officer (Panchayats) shall immediately on receipt of application under sub-rule (1) direct that one copy thereof be pasted in some

conspicuous place in his office together with a notice inviting objections to such application within a period of four days from the date of such pasting.

(3) The District Election Officer (Panchayats) shall as may be, after the expiry of the period specified in the notice under sub-rule (2), consider the

objections, if any, received by him and shall, if satisfied that the applicants entitled to be registered in the electoral roll, direct such name to be included

therein within a period of 3 days: Provided that if the applicant whose name is ordered to be included is already registered in the electoral roll of any

other constituency of the same Gram Sabha or another Gram Sabha or a Municipality, such a name shall be deleted from that electoral roll:

Provided further that an application under this rule at any time after publication

of the election programme under rule 32 shall be made to the District

Election Officer (Panchayats) not later than 9 days before the last date fixed for the filing of nomination papers:

Provided further that no amendment or transposition or deletion of any entry shall be made on or after the last date for making nomination till the election process is over.

(4) Where an application made under sub-rule (1), is rejected, an appeal shall be within a period of ten days from the date of rejection of the

application for the inclusion of names to the State Election Commission, whose decision shall be final.(5) Every appeal under subrule (4) shall be

accompanied by a fee of twenty rupees to be paid in cash against receipts.â??

6. However, learned counsel for the petitioner would argue that since the provisional electoral rolls were neither published nor notified or kept in the

Panchayat Ghar as per the Rules, therefore, he had no occasion or chance to avail of the remedy as provided under Rule 24.

7. These allegations of the petitioner are vehemently opposed by the learned Advocate General, on the basis of instructions dated 2.1.2021 received

from the office of District Election Officer (Panchayats) Shimla, H.P., the relevant portion whereof reads as under:-

â??1 That the draft publication of electoral rolls of various Gram Panchayats (GPs) of the District, along with Gram Panchayat Devla, Development

Block Basantpur was done on 3rd October, 2020 and claims and objections were to be received by the revising Authority (BDO Basantpur) w.e.f

05th October, 2020 to 14th October, 2020. During this period 91 persons have applied for addition their names in the voter list which has been added

accordingly in the voter list. The said draft was published in Zila Parishad/ Panchayat Samiti/Office of Gram panchayats (G.Ps) concerned. The

electoral roll was finally published on 5th November,2020.

2. That it appears from the content of the petition that the petitioner has not applied for addition her name neither in the aforesaid period before the

revising authority nor before District Election Officer before the last date as prescribed under rule 24 of H.P. Panchayati Raj (Election) Rules,1994,

i.e. nine days before the last date for filling of nomination papers. Hence she is not entitled to register his name in the electoral roll of Gram Panchayat

Devla, Development Block Basantpur.â??

8. Confronted with this, the learned counsel for the petitioner would still argue that no such exercise as stated by the learned Advocate General was ever undertaken by the Department.

9. We find no merit in the said contention. Moreover, the petitioner has never applied for addition of his name in the Voter List in the aforesaid period before the competent authorities.

10. Sections 35 and 114(e) of the Evidence Act declare that there was always presumption of regularity of an official act. Of course, such

presumption is rebuttable presumption. (See: Jagjit Singh vs. State of Haryana (2006) 11 SCC 1).

11. The wise principle of presumption which is also recognized by the legislature, is that judicial and official acts are regularly performed. The

presumption is based on the legal maxim *omnia praesumuntur rite et doctè probetur in contrarium solemniter esse acta* i.e. all the acts are presumed

to have been done rightly and regularly, applies. When acts are of official nature and went through the process of scrutiny by official persons, a

presumption arises that the said acts have regularly been performed. The learned counsel for the petitioner has miserably failed to rebut the

presumption.

12. Lastly and more importantly, it is also axiomatic that normally the High Court exercising jurisdiction under Article 226 of the Constitution of India

should not interfere with the process of election once the same has already commenced.

13. Reference in this regard can conveniently be made to the judgments of the Honâ??ble Supreme Court in *Nanhoo Mal and others vs. Hiramal &*

Ors., (1976) 3 SCC 211, *Shri Sant Sadguru Janardan Swami vs. State of Maharashtra and Ors*, 2001 (8) SCC 50 9 and *Election Commission of India*

vs. Ashok Kumar & Ors., 2000 (8) SCC 216.

14. In the instant case, the election process has already begun and final voter list has also been published, therefore, entertaining this petition at this

stage would amount to obstructing the election process, which is not permissible.

15. It is more than settled that Court in exercise of its writ jurisdiction can interfere in the matters relating to election only if it subserves the process of

election and facilitates the completion thereof.

16. The present petition filed after commencement of the election process, that too, with a view to stall election, therefore, cannot be entertained,

when the petitioner has an alternate efficacious remedy of filing an election petition under Rules.

17. Learned Counsel for the petitioner argues that leaving set aside the other issues raised in this petition , it is high time that the respondents upload

the draft and Electoral rolls on its official website that too in the public domain without being password protected so that instead of leaving the voters/

interested candidates at the mercy of the Panchayat Secretary or any other officer, such Electoral rolls can be inspected on a click of button.

18. The argument is well founded and we would even proceed to pass directions to this effect, but in view of the instructions supplied to the learned

Standing Counsel for the Election Commission by the Secretary, State Election Commission, such directions would not be necessary as it is clearly

stipulated in these instructions, which read as under:-

1. The State Election Commission publishes the draft of the electoral rolls under Rule 15 of the HP Panchayati Raj (Election) Rules, 1994 for

inviting claims and objections of the general public.

2. The copies of the draft rolls are made available for the inspection of the general public at the office of District Election Officer, Gram Panchyat,

Panchyat Samiti and Zila Parishad.

3. The draft electoral rolls is also available in the website of the State Election Commission for general public.

4. Any person from the general public can view search his name in the draft electoral rolls on the web site of the Commission.

5. The State Election Commission also published the public notice on dated 03rd, 04th, 05th,06th,07th,12th, 13thOctober,2020and 12th,13th,16th

November, 2020 in three Hindi and two English news papers.

6. The State Election Commission officials also participated in phone in programme on Akashwani Shimla two times in the month of October and

November.

7. After the receipt of claims and objections the revising authority appointed under rule 17 decides the claims and objections and the entries are made

in the electoral rolls by the Panchayat User in accordance with the orders passed by the revising authority.

8. Any person aggrieved by the order passed by the revising authority can file his appeal before the District Election Officer (P)-cum-Deputy

Commissioner. The order passed by the appellate authority are given effect by the Panchyat User in pursuance of the orders.

9. Thereafter the electoral rolls in finally published at the office of District Election Officer, Gram Panchyat at Samiti and Zila Parishad for the general public.

10. The firstly published electoral is made available on the web site of the commission.

11. After the final publication of the electoral roll an application for inclusion of name can be submitted in the District Election Officer (P)

accompanied a fee of Rs.2/-.

19. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed. Pending application(s), if any, also

stands disposed of. Parties are left to bear their own costs.