
(2019) 10 UK CK 0047
In the Uttarakhand High Court
Case No : Special Appeal No. 940 Of 2019

Jagdev Singh

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 243K

Citation : (2019) 10 UK CK 0047

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : K.P. Upadhyay, Anil Kumar Dabral, S.S. Chaudhary, Sanjay Bhatt

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in WPMS No.2969 of 2019 dated 14.10.2019. In the previous delimitation exercise, for elections held in the year 2014, Ghundada Village Panchayat was shown as part of Hudoli territorial constituency. While two separate proceedings, both dated 07.01.2019, were issued, in the first Ghundada Village Panchayat was shown as part of Hudoli territorial constituency, and it was shown as part of Rama territorial constituency in another. The State Election Commission claims that the delimitation exercise undertaken by the Government on 07.01.2019 was strictly in terms of the earlier delimitation exercise undertaken before the 2014 Panchayat Elections, and Ghundada Village Panchayat was rightly shown therein as part of Hudoli territorial constituency; while the manuscript sent for printing showed Ghundada as a part of Hudoli territorial constituency, an error occurred while printing, and Ghundada was erroneously shown as part of Rama territorial constituency; and during the exercise of verification, undertaken by the State Election Commission on 25.09.2019, this error came to light and, consequently, proceedings dated 27.09.2019 were issued correcting the earlier error.

2. The case of the appellant-writ petitioner, on the other hand, is that, since an election notification was issued on 13.09.2019, the proceeding dated 19.09.2019, issued by the District Panchayat Raj Officer changing the delimitation of Ghundada Village from Rama to Hudoli territorial constituency, was subjected to challenge; and elections should be held today treating Ghundada Village Panchayat as part of Rama territorial constituency and not as part of Hudoli territorial constituency.

3. In the order under appeal, the learned Single Judge observed that, since the superintendence, direction and control of the preparation of electoral rolls for conduct of all elections to Panchayats, lies with the Election Commission under Article 243-K, the State Election Commission should take a decision on the very same day so that elections should be conducted in accordance with law. The Writ Petition was disposed of modifying the earlier order dated 30.09.2019, whereby the State Election Commission was directed to conduct the elections as per the final electoral roll as per delimitation (Annexure No.5 to the Writ Petition).

4. While it is true that changes in the delimitation of wards, village panchayats, territorial constituencies and blocks should not, ordinarily, be changed after the election notification is issued, what appears to have been undertaken in the present exercise is to correct an earlier clerical error and, instead of showing Ghundada Village Panchayat as part of Hudoli territorial constituency as it was shown in the earlier 2014 elections, an error had occurred in printing, and Ghundada Village Panchayat was wrongly shown as part of Rama territorial constituency. Pursuant to the order passed by the learned Single Judge, the State Election Commission has passed an order on 14.10.2019 itself holding that Ghundada Village Panchayat was rightly shown as part of Hudoli; and the earlier mistake showing it, instead as part of Rama territorial constituency was rightly corrected.

5. Mr. K.P. Upadhyay, learned Senior Counsel appearing on behalf of the petitioner, would refer to the grounds of the Special Appeal to submit that the exercise was undertaken because of political motives. We asked learned Senior Counsel, to show us any such plea in the affidavit filed in support of the writ petition. Learned Senior Counsel would fairly state that no such plea was taken in the affidavit filed in support of the writ petition. Allegations of malafide are more easily made than established, through such allegations require proof of a very high order (E.P. Royappa Vs. State of Tamil Nadu and another, AIR 1974 SC 555).

6. While the superintendence, direction and control of the preparation of electoral rolls lies, undoubtedly, with the State Election Commission the power of judicial review of the High Court is available to be exercised in case the order suffers from a patent illegality or the exercise of power is either malafide or for extraneous reasons. We are satisfied that the clerical error committed earlier has merely been rectified since, even in the previous elections Ghundada Village Panchayat was shown as a part of Hudoli territorial constituency and not as part of Rama.

7. Interference in an intra-court appeal is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in said order.
8. The Special Appeal fails and is, accordingly, dismissed. No costs.