
(1981) 02 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2594 of 1978

Ram Gopal and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 12-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Gram Panchayat Act — Section 4, 5
Gram Panchayat Election Rules, 1960 — Rule 2
Registration of Electors Rules, 1960 — Rule 26
Representation of the People Act, 1950 — Section 22, 23

Citation : AIR 1981 P&H 385

Hon'ble Judges : Prem Chand Jain, J;J.M. Tandon, J

Bench : Division Bench

Judgement

J.M. Tandon, J.—This order will dispose of Civil Writ Petition Nos. 2594, 2576, 2674 and 2535 of 1978 in which common questions of law and fact are involved.

2. The petitioners in all the four writ petitions are residents of Adampur, Kohli, Kishangarh Mazra Khara Barwala and Mandi Adampur--all in Tahsil and district Hissar respectively. All the four villages have been declared Sabha area u/s 4 of the gram Panchayat Act and a Gram Panchayat has been established in each u/s 5 of the Gram Panchayat Act. Under Rule 2(f) of the Gram Panchayat Election Rules, 1960 an "elector" means a person who entered in the electoral rolls of the State Legislative Assembly, in force for the time being in relation to the Sabha area concerned. The petitioner in each C. W. P. were entered as voters in the electoral rolls for Legislative Assembly in force for the time being in relation to their concerned Sabha area. The Sub-Divisional Officer (Civil), Hissar, in exercise of powers as Electoral Registration Officers deleted the names of the petitioners as also of many others from the electoral rolls and further made addition of many persons as voters. The orders regarding deletion and addition were passed on June 2, 1978 and a list thereof was issued on June 4, 1978. The polling for electing the Members of the Panchayat was fixed for June 10, 1978, June 8,

1978, June 6, 1978 and June 6 1978 for Sabha areas of Adampur, Kohli, Mandi Adampur respectively. The petitioners having been denied the right, to exercise the right of franchise and some of them to contest the election have filed the four writ petition alleging that the deletion of their names as also of many other persons in a surreptitious manner and without affording them a reasonable opportunity and the additions of the names of many person as voters have vitiated the electoral rolls and the election of the Members of the Panchayats held on the basis thereof is liable to be set aside.

3. All the four writ petitions were first contested by the official respondent and the private respondents who were elected as members of the respective Panchayat in the elections held on the dates specified above. Later on during the pendency of the petitions, the official respondents changed their stand conceding that irregularities had been committed in the matter of deletion of names of the petitioners and of many others from the concerned electoral rolls without affording them a reasonable opportunity.

4. The persons whose names were allegedly added in the electoral rolls on the eve of election conducted in June, 1978, have not been impleaded as parties. The learned counsel for the petitioners in all the writ petitions therefore, fairly conceded that the petitioner cannot claim any relief against them in these petitions.

5. On January 19, 1980, the following order was passed with the consent of the learned counsel for the parties :--

"One of the points involved in this petition is whether the procedure prescribed under the Representation of the People Act, 1950(hereinafter referred to as the Act) and the Registration of electors Rules, 1960(hereinafter referred to as the Rules) was followed or not while deleting the names of the petitioners and other persons from the electoral rolls pertaining to the Gram Sabhas of villages Adampur, Adampur Mandi, Kohli and Khara Barwala, to which elections were held in the month of June, 1978.

The stand taken on behalf of the private respondents is that the names were deleted in June 2/4, 1978, by the Registering Authority by passing a regular order, while the stand taken by the petitioners as well as the State is that the procedure required to be followed was not followed by the Registering Authority and that the names were deleted in an arbitrary manner.

In order to find out the factual position, especially when two contradictory written statement have come from the State, it has become essential to find out if the procedure as required under the Act and Rules, was followed or not, the learned counsel for the parties are agreed that an enquiry be got made through the commissioner Hissar Division, who after examining the records and affording such opportunity of hearing to the petitioners and the private respondents as he deems necessary (should) submit a report whether the names of the voters, who are petitioners and other persons were deleted in accordance with the rules or

not and that whatever is the result of the enquiry, the writ petition be decided in accordance therewith.

In view of what has been stated by the learned counsel for the parties, the Commissioner, Hissar Division is directed (sic) within a month from the date he received intimation from this Court about this order, about the following matter:

"Whether the names of the petitioners and other persons were deleted from the Electoral Rolls by the Registering Authority on June 2/4, 1978, pertaining to villages Adampur, Adampur Mandi, Kohli and Khara Barwala in accordance with law or not?"

The parties through their learned counsel have been directed to appear before the Commissioner, Hissar Division, Hissar on February 1, 1980. Mr. U.D. Gaur, learned Advocate-General undertakes to produce the record on that date.

The case to come up now before us on March 7, 1980."

6. The Commissioner, Hissar Division, submitted his report dated September 14, 1980, wherein he found as under:--

When record relating to the 134 petitioners who filed these writ petitions was examined it was found that the names of all excepting 7 persons (Civil Writ Petition No. 2535) had been deleted though they continued to be bona fide residents of these villages. It was not possible to examine most of them Nor was it necessary. A fair cross sampling became available with the examination of P.W. 1. Tulsi Ram (Writ No. 2674), P.W. 4 Rulsi Ram (Writ No 2635), P.W. 5 Gopal (writ No. 2594) and P.W. 6 Gulab Singh (Writ No 2576)--witnesses hailing from different villages. If these bona fide residents of the villages in question had their names removed, it would be reasonable to assume that if out of 134 petitioners who filed these writs 127 had their names removed many other bona fide residents of these villages had their names deleted. According to Shri Preet Singh who conducted an inquiry in 1979 and filed an affidavit in the high court the number of names improperly deleted from these four villages is as follows:

- (1) Mandi Adampur 511 persons
- (2) Adampur village 202 Persons
- (3) Kohli 262 persons
- (4) Kishangarh Mazra
Khara Barwala. 11 persons

It was not physically possible to summon all these witnesses and then ascertain whether deleting of their names was carried out in accordance with the law.

- - - - - My summing up of the position in regard to the deletion of names of the persons in question would be the action of ERO did not violate the relevant provision of the Statute and the Rules but was in contravention of the

directions of the Election Commission which have the force of law. He may have technically complied with the requirement of the Act and Rules but judging from the totality of the circumstance it would appear that every endeavor was not made by him to afford due opportunity to the persons before they were deprived of their right of franchise."

7. The report of the Commissioner; Hissar Division, was found lacking on some points. He was consequently directed to submit a report thereon vide order dated September 22, 1980 which reads as under:--

"A report has come from the Commissioner, Hissar Division. After going through the report we find that the following three points need further clarification as a firm finding has not been given thereon:--

(1) Whether the notices in forms 13 and 14 were sent to all the persons whose names were sought to be deleted or not?

(2) Whether the notices were actually served on all those persons or not? And

(3) Whether in response to the notices some persons put in appearance or not? In addition to the aforesaid three point, it may also be found out as to why the date for deciding the objections was changed from June 3, 1978 to June 2, 1978, as a contention has been raised by the learned Advocate-General (Haryana) that purposely interpolation in the notice was made and the original date for deciding the objections which were fixed for June 3, 1978 was changed to June 2, 1978.

The learned Commissioner would expedite the matter and if possible send his report within one month of the receipt of intimation of this order. The parties through their learned counsel have been directed to appear before the learned Advocate-General (Haryana) that purposely interpolation in the notices was made and the original date for deciding the objection which were fixed for June 3, 1978, was changed to June 2, 1978.

The learned Commissioner would expedite the matter and if possible send his report within one month of the receipt of intimation of this order. The parties through their learned counsel have been directed to appear before the learned Commissioner on October 6, 1980.

The learned counsel for the parties are agreed that they would not lead any evidence:

"on the aforesaid points and that the report may be sent on the basis of the evidence already recorded. The case to come up for hearing on November 10, 1980."

8. The Commissioner, Hissar Division, then submitted his further report dated October 22, 1980, and it reads as under:--

"Answers to the various queries raised by the Hon"ble High Court are as under:--

1. Notices in Form 13./14 were sent to all the persons whose names were sought

to be deleted.

2. These notices were not sent by post or messenger to the persons whose names were sought to be deleted. The notices were not actually served on those persons. Their service is said to have been effected through the patwaris/ Chaukidars.

3. No person appeared before the Electoral Registration Officer in response to the aforesaid notices.

4. The date for deciding the objection as originally entered in the notices read June 3, 1978. In most of them it was altered to June 2, 1978. Only in respect of 290 persons (indicated in the statement enclosed) the date was not altered. The Electoral Registration Officer acknowledged the fact that in most of the notices issued to those persons the date originally fixed for their appearance June 3, 1978. had been altered to June 2, 1978. About the reason for altering the date, his exact words are:

"This appears to have been done by the Government officials and could have been bona fide".

He did not elaborate"

9. Section 22 of the Representation of the people Act, 1950, provide for the correction of voters in electoral rolls and it reads:--

"22. Correction of entries in electoral rolls. If the Electoral Registration Officer for a constituency on application made to him or on his won motion it satisfied after such inquiry as he thinks fit that any entry in the electoral roll of the constituency.-

(a) is erroneous or defective in any particular.

(b) Should be transposed to another place in the roll on the ground that the persons concerned has changed his place of ordinary residence within the constituency, or.

(c) Should be deleted on the ground that the person concerned is dead or had ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll.

The Electoral Registration Officer, shall subject to such general or special direction if any, as may be given by the election Commission in this behalf, amend, transpose or delete the entry:

"Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him"

10. It is not disputed that the Election Commission had issued direction in the context of Section 22 reproduced above and the relevant portion thereof reads.-

"Any application for deletion or correction of an entry in the electoral rolls u/s 22 or inclusion of a name u/s 23 of the Act, is to be disposed of in the manner laid down in R. 26 of the Registration of Electors Rules, 1960, which inter alia provides that the electoral registration officer shall be satisfied that the applicant is entitled to be registered in the electoral roll. The necessary condition for such satisfaction is that the claim is verified on the spot and found to be valid. The Commission, therefore, direct that any application for deletion or correction of an entry in the electoral roll u/s 22 or inclusion of a name u/s 22 or inclusion of a name u/s 23 of the Representation of the People Act, 1950, should be verified by the Electoral Registration Officer on the spot before it is disposed of under Rule 26 of the Registration of Electors rules 1960."

11. According to the direction issued by the Election Commission the Electoral Registration Officer was required to personally verify on the spot before ordering the deletion of the names of voters from the electoral rolls. It is admitted that the Electoral Verification in terms of the directions issued by the Election Commission u/s 22 of the Representation of the people Act, 1950 are mandatory and non-compliance thereof vitiates the order of deletion. The learned counsel for the elected members has contended that the directions issued by the Election Commission are directory and not mandatory with the result that non-compliance thereof on the part of the Electoral Registration officer would not vitiate his order passed u/s 22 of the Representation Officer would not vitiate his order passed u/s 22 of the Representation of the People Act. We are inclined to agree with the learned counsel for the elected members. It is specifically provided in the proviso to Section 22 that the Electoral Registration Officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him. In the light of this salutary provision which of course, is mandatory, the directions issued by the Election Commission are a further safeguard and will thus be directory in nature and not mandatory. We, therefore, hold that the non-compliance by the electoral Registration Officer of the directions issued by the Election Commission in the matter of personal verification will not vitiate the order of deletion passed by him.

12. The learned counsel for the petitioners has contended that the petitioners as also many others were not afforded reasonable opportunity and the orders of deletion of their names from the electoral rolls are liable to be set aside. The learned counsel for the elected members of the Panchayat has argued that the petitioners and many others whose names were deleted by the Electoral Registration officer on June 2, 1978, were afforded reasonable opportunity and the fact that they did not choose to appear before the Electoral Registration Officer on the date fixed would not vitiate the order of deletion passed against them. In our opinion the contention of the learned counsel for the petitioners must prevail.

13. It is not disputed that the objection regarding the deletion of names from the concerned electoral rolls were filed in the last week of May, 1978. It was stated during arguments that the first objection was filed on or about May 26, 1978. The Electoral Registration Officer directed that the notices be issued to the affected persons including the petitioner for June 3, 1978. The Commissioner, Hissar Division, has found that in most of the notice issued the date was altered in respect of 29 persons. The Electoral Registration Officer did not order the change of date from June 3, 1978 to June 2, 1978. Who made the change of date and when remains a mystery. The learned Advocate General appearing on behalf of the State as also the learned counsel for the petitioners have contended that the alteration of date from June 3, 1978 to June 2, 1978, was made in the notice after June 2, 1978 to cover up the discrepancy in the dates mentioned in the notices and the order of the Electoral Registration Officer. The learned Counsel for the elected members of the Panchayat Expressed his inability to furnish any explanation on this point and same is the case with the report of the Commissioner, Hissar Division. It is thus clear that in spite of the notices having been issued for June 3, 1978, the order was passed by the Electoral Registration Officer on June 2, 1978. Later, on having found the discrepancy in the dates, an attempt was made to remove it by making the interpolation regarding the date in the notices. It is interesting that the alteration of date was not made in the notices issued to 290 affected persons.

14. The Electoral Registration Officer started receiving objections relating to the deletion of names from the electoral rolls on or about May 26, 1978. The objection continued pouring in till May 31, 1978. It is surprising that the notice were ordered to be issued for June 2, 1978, even in respect of the objection received on May 31, 1978. The Commissioner has found that notices were neither sent by post nor by a messenger to the persons whose names were sought to be deleted. The Patwari in his affidavit has stated that he got the notices affixed on the residence of the person (as entered in the electoral rolls) to whom the notices were issued because they were not available as they had ceased they were not available as they had ceased to be residents of the villages and further got their services effected by proclamation. The Commissioner in his report has found that the persons had continued to be bona fide residents of those villages. In the face of this report, the affidavit of the Patwari cannot be relied upon. This apart, it is rather intriguing that without there being an order of the Electoral Registration Officer that the substituted service be effected by pasting of the notices on the residence of the persons to whom the notices had been issued and/or by publication by beat of drum, the Patwari thought it proper to do so that his own level. The notices were issued for June 3, 1978. The substituted services if permissible, could also be effected for that date. The order was passed by the Electoral Registration Officer deleting the names of a large number of persons (511 in Mandi Adampur, 202 in Adampur village, 262 in Kohli and 11 in Kishangarh Khara Barwala), including that of the petitioners from the electoral rolls on June 2, 1978.

15. The Commissioner, Hissar Division, in his report, dated September 14, 1980, has opined that the Electoral Registration Officer did follow the relevant provision of the statute and the Rules, but he contravened the directions of the Election Commission which have the force of law. It has been held above that the directions issued by the Election Commission on the point are directory and not mandatory. The Non-compliance of the directions by the Electoral Registration officer would, therefore, not vitiate the orders passed u/s 22 of the Representation of the People Act. The subsequent report of the Commissioner Hissar Division dated October 22, 1980 clearly bring out that the Electoral Registration Officer did not follow the provision of Section 22 of the Representation of the People Act. The subsequent report of the commissioner, Hissar Division, dated October 22, 1980, clearly bring out that the Electoral Registration Officer did not follow the provisions of Section 22 of the Representation of the people Act in as much as a reasonable opportunity was not given to the affected persons including the petitioners when their names were ordered to be deleted from the electoral rolls on June 2, 1978. The orders passed by the Electoral Registration Officer on June 2, 1978, deleting the names of a large number of persons including that of the petitioners from the electoral rolls are illegal and without jurisdiction and are, there fore, liable to be quashed.

16. In *Amir Chand v. Dhan Raj* 1960 Pun LR 679, it was held:--

"..... that if election held on the basis of a materially defective or an illegal or improper electoral roll, cannot under the Rules, be set aside by means of an election petition, the High Court, has power under Article 226 of the Constitution to determine the validity of the impugned election by means of a petition for a writ of quo warranto or other suitable writ, order or direction. Under the Constitution the High Court is empowered and is indeed duty bound whenever apprehend by an aggrieved citizen to see that the public functionaries perform their statutory duties in accordance with the letter and the spirit of the law and that there is no irresponsible reckless or bureaucratic indifference to the real and true object and purpose of the duty imposed by the statutory provisions. The High Court has to be particularly vigilant when the grievances relates to the legality of the electoral rolls and there is no other reasonably effective and adequate remedy available. "

17. The ratio of *Amir Chand v. Dhan Raj* 1960 Pun LR 679 (supra) is applicable to the facts of the present case particularly in view of the agreed stand of the learned counsel for the parties and contained in the order dated January 19, 1980, reproduced above, that whatever is the result of the enquiry by the Commissioner Hissar Division the writ petitions may be decided in accordance therewith. The elections of the members of the Panchayat in June, 1978, were conducted in the four villages detailed above on the basis of electoral rolls which had been illegally mutilated as a result of the deletion of a large number f names, including that of the petitioner by the Electoral Registration officer on June 2, 1978. The election held on the basis of such electoral rolls in four villages

detailed above are, therefore, liable to be set aside as well.

18. In the result, we accept all the four writ petitions and quash the orders of the Electoral Registration Officer dated June 2, 1978, deleting the names of persons, including that of the petitioners from the electoral rolls of the petitioners from the electoral rolls relating to villages Adampur, Kohli Kishangarh Mazra, Khara Barwala and Mandi Adampur--all in Tehsil and District Hissar. The election under the Gram Panchayat Act held in these villages in June, 1978, are also set aside. It shall be open for the electoral Registration Officer to decide the objection afresh with respect to which his order already passed on June 2, 1978, have been set aside. The Government will hold fresh elections of the Members of the Panchayats of these villages. No order as to costs.

19. Petitions allowed.