

(2019) 09 UK CK 0053

In the Uttarakhand High Court

Case No : Writ Petition (PIL)_No. 144 Of 2019

Ravindra Jugran

APPELLANT

Vs

State Election Commission And Another

RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 243C, 243C(2), 243C(3), 243K, 243K(4), 243ZA, 324

Citation : (2019) 09 UK CK 0053

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

Bench : Division Bench

Advocate : M.C. Pant, Sanjay Bhatt, Shobhit Saharia

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. M.C. Pant, learned counsel for the petitioner, Mr. Sanjay Bhatt, learned Standing Counsel for the State Election Commission-respondent no. 1 and Mr. Shobhit Saharia, learned Standing Counsel for the Election Commission of India-respondent no. 2 and, with their consent, the Writ Petition is disposed of at the stage of admission.

2. The relief sought for in this Writ Petition is for a mandamus commanding the respondents to consider the petitioner's grievances as highlighted in his representation dated 19.12.2018, and to consider linking the Voter ID Card of every valid adult voter with his Aadhaar Card; treat the Voter ID Card as a valid document for casting vote in every election; and to have a common list for every election either for Parliament, Assembly or for Local Bodies and Panchayats.

3. Article 243C, in Part IX of the Constitution of India, relates to the composition of Panchayats, and under Clause (1) thereunder, subject to the provisions of Part IX, the Legislature of a State may, by law, make provisions for composition of Panchayats. Article 243C(2) stipulates that all seats in a Panchayat shall be filled

by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

4. Article 243C(3) enables the Legislature of a State, by law, to provide for the representation of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level etc. Article 243K relates to elections to Panchayats and, under Clause(1) thereof, the superintendence, direction and control of preparation of electoral rolls for, and the conduct of, all elections to Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. Under Article 243K(4), subject to the provisions of the Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

5. Provisions, similar to Article 243K in Part IX of the Constitution of India, are also prescribed for Urban Local Bodies under Article 243ZA in Part IXA of the Constitution of India. In terms of the provisions of the Panchayati Raj Act, 2016, a separate electoral roll is required to be prepared for Panchayats in the State. The mode and manner in which these electoral rolls are to be prepared is also stipulated therein.

6. While it is always open to the State Legislature to prescribe, by law, that the electoral rolls prepared for Parliamentary and Legislative Assembly Elections shall form the basis for elections to Panchayati Raj Institutions and Urban Local Bodies also, these are all matters for the Legislature, in its wisdom, to decide and not for this Court to direct. However laudable be the intention of the petitioner, to ensure that all those, who have the right to vote, are permitted to exercise their franchise, and arbitrary deletion of their names from the electoral rolls is avoided, the jurisdiction which this Court exercises, under Article 226 of the Constitution of India, would not, ordinarily, extend to issuing a mandamus to the Legislature to make a law.

7. The power of superintendence conferred on the State Election Commission, both under Article 243K in Part IX and Article 243ZA in Part IXA of the Constitution of India, is akin to the power of superintendence conferred on the Election Commission of India under Article 324 of the Constitution of India.

8. While examining the scope of Article 324 of the Constitution of India, the Supreme Court, in *A.C. Jose v. Sivan Pillai and others* : AIR 1984 SC 921, has held that, when there is no Parliamentary Legislation, or Rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections; and where the Act or the Rules are silent, the Commission has plenary powers, under Article 324 of the Constitution of India, to give any direction in respect of the conduct of elections.

9. Since the petitioner has already submitted a representation to the State Election Commission in this regard on 19.12.2018, we have no reason to doubt that the State Election Commission shall examine the said representation and take all such steps as are necessary, if need be, by issuing necessary guidelines under Article 243K and 243ZA of the Constitution of India, to ensure that the right of a citizen, to exercise his franchise, is not denied by an erroneous deletion of his name from the electoral roll. While the suggestion put forth by the petitioner, that linking the Voter ID Card with the Aadhaar Card may obviate such errors, has considerable force, these are all matters for the State Election Commission, which has been conferred the power of superintendence of all elections for Panchayati Raj Institutions and Urban Local Bodies, to examine in accordance with law.

10. Suffice it to request the State Election Commission to bestow its serious consideration to the contents of the representation submitted by the petitioner and take appropriate action in accordance with law.

11. While Mr. Shobhit Saharia, learned Standing Counsel for the Election Commission of India, would contend that no relief is sought against the Election Commission of India, the petitioner has, in effect, sought the electoral roll, prepared by the Election Commission of India under the Representation of the People Act, 1951, to form the basis for preparation of the electoral rolls for Panchayati Raj Institutions and Urban Local Bodies in the State of Uttarakhand. It is unnecessary for us to dwell on this aspect any further, since the preparation of an electoral roll is prescribed in the State of Uttarakhand by law made by the State Legislature called the "Uttarakhand Panchayati Raj Act, 2016".

12. The Writ Petition is, accordingly, disposed of. No costs.