

(2004) 12 MP CK 0022
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5052 of 2004

Uttam Chand Khatik

APPELLANT

Vs

State Election Commissioner of M.P. and Others

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Representation of the People Act, 1950 — Section 20

Citation : (2005) 1 MPLJ 168

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : P.D. Gupta, for the Appellant; V.S. Shroti with Ashish Shroti, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

Petitioner aggrieved by order dated 28-10-2004 Annexure P-5 passed by Registration Officer, Panchayat Election, Gram Panchayat, Ranipura by which respondent No. 3 refused to register petitioner as a voter of village Khajuriaguru and by order dated 8-12-2004 Annexure P-12 passed by respondent No. 4, by which petitioner's appeal against the order Annexure P-5 has been dismissed, has filed this petition.

The petitioner has sought following reliefs in this petition:-

1. The Hon'ble Court be pleased to call for the entire record relating to the claim of the petitioner from the respondent Nos. 3 and 4 and may kindly examine the same.

The Hon'ble Court may kindly be pleased to quash the orders Annexure P-5 and P-12 and may kindly be pleased to direct the respondents to include the name of the petitioner in the voters list of revenue village Khajuriaguru.

Any other relief which this Hon'ble Court deems fit and proper in the facts and

circumstances of the case may kindly also be granted.

The facts of the case as stated by the petitioner are that, the petitioner is ordinarily resident of village Khajuriaguru in Gram Panchayat, Ranipura. The respondent No. 1 issued notification for revising voter list of village for election of Panchayats Annexure P-1. Petitioner contested various elections in the previous years. He was elected to the Legislative Assembly of Madhya Pradesh from Naryawali Assembly constituency. He was elected twice as a member of District Panchayat, Sagar. The village Khajuriaguru falls within Naryawali Assembly Constituency. In the month of September, 2004 petitioner noticed that his name is appearing in the voter list of Gandhi Chowk ward within the Municipal Corporation area of Sagar. The petitioner owns house, agricultural lands and other immovable property at many places in the District Sagar. He also owns a house in Sagar city, but he does not reside there. He has agricultural lands and house in Biharipur Gram Panchayat, but he does not reside there. He ordinarily resides in village Khajuriaguru for the last many years where he owns agricultural lands and residential house. On noticing the fact that petitioner's name is appearing in the list of Municipal Corporation, Sagar, he moved an application on 30-9-2004 requesting the Assistant Registration Officer, Urban Election, Sagar for deleting his name from the voter list, a copy of which is filed as Annexure P-2. On 7-10-2004 petitioner moved an application before respondent No. 3 for inclusion of his name in Biharipur village. Copy of receipt is Annexure P-3. The petitioner after filing of said application realised that he is not entitled to be included in Biharipur Gram panchayat because he ordinarily resides in village Khajuriaguru. Then he moved another application in prescribed form and manner duly verified for inclusion of his name in the voter list of village Khajuriaguru on 8-10-2004, acknowledgement is Annexure P-4. The application of petitioner was supported by documents as required under law. The respondent No. 3 conducted enquiry on the application. Patwari reported in favour of petitioner. As the respondent No. 3 did not pass any order, petitioner filed a writ petition before this Court, which was registered as W.P. No. 4589/2004. In the aforesaid petition respondent No. 3 filed a copy of order dated 23-11-2004 by which it revealed that the respondent No. 3 had rejected application of petitioner by passing order Annexure P-5 and the petitioner was permitted to file appeal against the order. Thereafter petitioner filed an appeal before the Sub-Divisional Officer (Revenue), Sagar. The appeal was heard and decided by the impugned order Annexure P-12 and was dismissed.

The respondent No. 4 by the impugned order Annexure P-12 has recorded following findings in the case:-

(i) That the petitioner's name is recorded in the Municipal Corporation Sagar in Shivaji ward No. 31 at serial No. 437 and in Gandhi Chowk ward No. 4 at serial No. 834.

(ii) That the petitioner has not filed any application for deleting his name from the aforesaid places before the competent authority.

(iii) That the petitioner has contested the election of Member of Parliament in the year 2004 as a authorised candidate of recognised political party and he has shown his address as Gandhi Chowk ward, Bada Bazar, Sagar, which was duly certified by the Returning Officer, Collector, Sagar on 16-4-2004. This information was furnished by the petitioner in the nomination form on oath. Though the petitioner has filed an affidavit that he is an ordinarily resident of village Khajuriaguru, which is supported by the certificate of Chowkidar (Gram Kotwar), Sarpanch and affidavit of Nandram Ahirwar, but these documents are contradictory to the previous information submitted by the petitioner on oath in the election of Parliament on 16-4-2004.

(iv) That the appellate authority found that both the affidavits are contradictory to each other and the name of petitioner is appearing in the voter list of Gandhi Chowk ward, Bada Bazar, within the Municipal Corporation area of Sagar, dismissed the appeal.

The aforesaid order has been challenged by the petitioner on these grounds:-

(a) That in the enquiry, all the Government officials have supported the contention of petitioner and have recommended that the petitioner is an ordinarily resident of village Khajuriaguru and is entitled for registration of his name in the voter list of Khajuriaguru, but the Registration Officer erred in rejecting the application of petitioner.

(b) That for the Parliamentary election petitioner was entitled to contest the election from any place and merely in the said application petitioner has shown his address of Gandhi Chowk ward and Shivaji ward, will not be a ground to reject the application of petitioner to register his name in the voter list of Gram Panchayat.

(c) That in the application itself petitioner has prayed that his name from Shivaji ward and Gandhi Chowk ward of Sagar be deleted and be entered in the voter list of Gram Panchayat.

The learned counsel for State Election Commission supported the order on the grounds:-

(a) That the petitioner is not entitled for any relief as he is ordinarily resident of Municipal Corporation area Sagar and his name is appearing in the voter list of Sagar.

(b) The petitioner just six months back has shown his residence within the Municipal Corporation Sagar area. Now he cannot change his stand that he is an ordinarily resident of village Khajuriaguru.

(c) That though in the application Annexure P-5 there is a column of deletion of name of applicant from other voter list, but infact this is applicable only in respect of election of Panchayat. If the name of applicant is appearing at any other place in the Panchayat area incorrectly, then the applicant may bring this

fact to the notice of Registration Officer that his name is incorrectly appearing in the voter list of some other place and in place of that voter list his name be registered at a place of which petitioner is ordinarily resident and is entitled for correction of voter list.

(d) As the scope of Rule 11 of M.P. Panchayat Nirvachan Niyam, 1995 (hereinafter referred to as "Panchayat Niyam" for short) is in respect of panchayat area. If a person whose name is wrongly appearing in the Municipal area has to file appropriate application in accordance with the provisions of M.P. Nagarpalika Nirvachan Niyam, 1994 (hereinafter referred to as "Nagarpalika Niyam" for short) and the procedure envisaged in the "Nagarpalika Niyam" will be followed. Similar provision finds place in Rule 5 of the "Nagarpalika Niyam". The harmonious construction of both the provisions will be that if the name of any person is not entered or incorrectly entered within the Municipal area he may file his claim under Rule 5 of "Nagarpalika Niyam" or if his name is wrongly appearing in the Panchayat area then he may seek deletion of his name under "Panchayat Niyam" and may claim his name to be entered in the voter list of Municipal area. The scope of both the provision is different.

(e) That once the petitioner has contested the election for Member of Parliament showing him as ordinarily resident in the Corporation area of Sagar, thereafter the election of Corporation has been held in recent past in which the petitioner's name remained in the voter list, now after the election of Municipal Corporation, Sagar the petitioner cannot claim his name to be entered in the voter list of Gram Panchayat under Rule 11 of "Panchayat Niyam".

(f) The application filed by the petitioner was misconceived and was rightly rejected, by Registration Officer and in the appeal by the appellate authority.

To consider the rival contention of the parties, the following facts are not in dispute:-

(1) The petitioner is a resident of District Sagar. As per the averments in the petition he is having landed property in Sagar city and also in two villages of Sagar District.

(2) The petitioner's name is appearing in the voter list of Municipal Corporation area at two places.

(3) The petitioner, contested, the election of Member of Parliament on the authorisation of a recognised political party in which he has shown his address as an ordinarily resident of the Municipal Corporation area of Sagar.

(4) After the election of Member of Parliament in the month of April-May, 2004, the election of Municipal Corporation has been held in the month of November, 2004 in which the procedure for correction of voter list was again followed and petitioner's name continued in the voter list of Municipal Corporation area Sagar.

(5) That the petitioner's name is not appearing in the voter list of panchayat

area, for which petitioner applied by application Annexure P-4 and his claim was rejected by Annexure P-5 on the ground that his name is appearing in the voter list of Municipal Corporation, Sagar and is not entitled to enter his name in the voter list of Panchayat.

The aforesaid facts shows that in the month of April, 2004 petitioner contested the election for Member of Parliament showing his name in the voter list of the Municipal Corporation, Sagar. After nearabout seven months the election of Municipal Corporation, Sagar were held in which similar procedure for correction and finalisation of voter list was adopted by the respondents and the petitioner did not apply for correction and deletion of his name from the voter list of Municipal Corporation, Sagar. After the election of Municipal Corporation Sagar, the petitioner applied for entry of his name in the voter list of Panchayat in village Khajuriaguru, which has been rejected. The petitioner was well aware with the fact that his name is appearing in the voter list of Municipal Corporation area when he contested the election of Member of Parliament. Thereafter petitioner was having one opportunity to delete his name from the voter list of Municipal Corporation, Sagar, when process of election of Municipal Corporation, Sagar was initiated but the petitioner did not choose to delete his name from the list of that area. Though the petitioner was entitled to contest the election of Member of Parliament, even if his name is appearing either in the voter list of Municipal Corporation, Sagar or in any of the village of District Sagar, this could not have affected his candidature for the purposes of contesting election of Member of Parliament. But fact remains that it was within the knowledge of petitioner that his name was appearing in the voter list of Municipal Corporation area and twice he got opportunity to delete his name from that area, if the petitioner was bona fide resident of village Khajuriaguru. Before the impugned orders, the petitioner applied for inclusion of his name in the voter list of village Biharipur also, but did not press that application. Thereafter the petitioner applied for inclusion of his name in the voter list of Khajuriaguru. When petitioner's name is appearing in the voter list of Municipal Corporation, Sagar, then u/s 5 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "Act" for short) he is not entitled for registration of his name in the voter list for ready reference section 5 is quoted as under:-

5. Registration of voters of a village - Every person who is qualified to be registered in the Assembly roll relatable to a village or whose name is entered therein and is ordinarily resident within the village shall be entitled to be registered in the list of voters of that village: Provided that

(a) no person shall be entitled to be registered in the list of voters for more than one village;

(b) no person shall be entitled to be registered in the list of voters if he is registered in the electoral roll relating to any other local authority.

Explanation -

(1) The expression "ordinarily resident" shall have the meaning assigned to it in section 20 of the Representation of the People Act, 1950 (No. 43 of 1950) subject to the modification that reference to "Constituency" therein will be construed as a reference to "village".

(2) A person shall be disqualified for registration in the list of voters of a village if he is disqualified for registration in the Assembly roll.

Section 5 of the Act specifically provides that for the registration in the voter list of village it is necessary that his name must appear in the voter list of village and he should be ordinarily resident of village. The proviso provides that no person shall be entitled to be registered in the list of voter if he is registered in the electoral roll relating to any other local authority.

In this case it is not in dispute that the petitioner's name is registered in the electoral roll of Municipal Corporation, Sagar from where the petitioner contested the election of Parliament and after even getting opportunity to get his name deleted from the electoral roll of local authority, which he not availed, petitioner is not entitled for registration of his name in the voter list of village Khajuriaguru.

In view of aforesaid, the order passed by the Registration Officer and appellate authority is based on sound reasoning and is in accordance with the provisions of law. There is no merit in this petition and it is dismissed with no order as to costs.