

(2018) 03 UK CK 0022

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 539 of 2018

WASIM

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Uttarakhand Panchayati Raj Act, 2016 — Section 54(9), 54

Citation : (2018) 03 UK CK 0022

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : Rajendra Dobhal, G.D. Joshi, Yogesh Pandey, N .S. Pundir

Final Decision : Allowed

Judgement

1. According to the petitioner, he is a member of Gram Sabha Chauli, Shahbuddinpur, District Haridwar since 1960. Now, all of a sudden, without giving an opportunity of hearing to him, an order has been passed on 16.12.2017 by the respondent authorities, by which the name of the petitioner has

been deleted from the electoral roll of Gram Sabha 'Chauli' and it was ordered that the name of the petitioner be added in another Gram Sabha,

known as 'Mandawar'. Thereafter on 03.01.2018, respondent no. 4 passed another order directing for delimitation of wards of

Village Panchayat Chauli, Shahbuddinpur and Mandawar. This order has also been challenged by the petitioner before this Court.

2. Learned Senior Counsel for the petitioner relies upon sub-section (9) of Section 54 of the Uttarakhand Panchayati Raj Act, 2016 (from hereinafter

referred to as the 'Act'), which reads as under:-

54. Electoral roll for each territorial constituency.- (1) For each territorial

constituency of a Kshettra Panchayat, an electoral roll shall be

prepared, in accordance with the provisions of this Act, and the rules made thereunder under the superintendence, direction and control of the State

Election Commissions.

(a) Subject to the superintendence, direction and control of the State Election Commission, the State Election Commissioner shall supervise and

perform all functions relating to the preparation, revision and correction of the electoral rolls in the State in accordance with this Act and the rules

made thereunder.

(b) The preparation, revision and correction of the electoral rolls shall be done by such persons and in such manner, as may be prescribed.

(2) The electoral roll for the territorial constituency of a Kshettra Panchayat shall consists of the electoral roll prepared of a Gram Panchayat or Gram

Panchayats comprised within the territorial constituency of the Kshettra Panchayat and it should not be necessary to prepare or revise separately the

electoral roll for any such territorial constituency of a Kshettra Panchayat :

Provided that any correction, deletion or addition made in the electoral roll after the late date for making nominations for any election to the Kshettra

Panchayat and before the completion of that election shall not be taken into consideration for the purposes of that election.

(3) The electoral roll referred to in clause (a) of sub-section (1) shall be published in the prescribed manner and upon its publication it shall, subject to

any alteration, addition or modification made in accordance with this Act and the Rules made thereunder be the electoral roll for that territorial

constituency prepared in accordance with the provisions of this Act.

(4) Subject to the provisions of clause (a), (b) of sub-section (1), every person who has attained the age of 18 years on the first day of January of the

year in which the electoral roll is prepared or revised, and who is ordinarily resident in the territorial constituency of a Gram Panchayat shall be entitled

to be registered in the electoral roll for the territorial constituency;

Provided that-

(i) A person shall not be deemed to be ordinarily resident in the territorial constituency on the ground only that he owns or is in possession of, a

dwelling house therein.

(ii) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(iii) A member of Parliament or of the Legislature of the State shall not during the term of his office cease to be ordinarily resident in the territorial

constituency merely by reason of his absence from that area in connection with his duties, as such member.

(iv) Any other factors that may be prescribed shall be taken into consideration for deciding as to what persons may or may not be deemed to be

ordinarily residents of a particular area at any relevant time.

(v) If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to

all the facts of the case.

(5) A person shall be disqualified for registration in an electoral roll, if he-

(i) is not a, citizen of India; or

(ii) is of unsound mind and stands soÂ Â declared by a competent court; or

(iii) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with

elections.

(6) The name of any person who becomes disqualified under sub-section (5) after registration shall forthwith be struck off the electoral roll in which it

is included :

(7) No person shall be entitled to be registered in the electoral roll for more than one or more than once in the electoral roll for the same Panchayat.

(8) No person shall be entitled to be registered in the electoral roll for any territorial constituency, if his name is entered in any electoral roll pertaining

to any city, municipality or cantonment unless he shows that his name has been struck off such electoral roll.

(9) Where the Electoral Registration Officer or Asst. Electoral Registration Officer is satisfied after making such inquiry as it may deem fit, whether

on an application made to it or on its own motion, that any entry in the electoral roll should be corrected or deleted or that the name of any person

entitled to be registered should be added in the electoral roll, it shall subject to the provisions of this Act and rules and orders made thereunder correct,

delete or add the entry as the case may be:

Provided that no such correction, deletion or addition shall be made after the last date for making nominations for an election in the Gram Panchayat

and before the completion of that election:

Provided further that no deletion or correction of any entry in respect of any person affecting his interest adversely shall be made without giving him

reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

(10) (11) (12)

(13)

(14)

3. The above proviso makes it absolutely clear that before correcting any entry in the electoral roll, an opportunity of hearing has to be given to the

person concerned, which admittedly in the present case has not been given.

4. Learned counsel for respondent no. 2 Mr. N.S. Pundir submits that the impugned order has not been implemented as yet, and it is only

recommendatory in nature. However, learned counsel for respondent no. 2 fairly submits that sub-section (9) of Section 54 of the Act has not been

followed.

5. In view of the above, the writ petition is allowed. The impugned orders dated 16.12.2017 and 03.01.2018 are hereby quashed.

6. The Electoral Officer is given liberty to make necessary correction in accordance with law after giving an opportunity of hearing to the petitioner.