

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 17411 of 2018

Date of decision : 01.05.2019

Prem Singh and others

.....Petitioners

Versus

State of Punjab and others

...Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present : Mr. Munish Gupta, Advocate for the petitioners.

Mr. I.P.S. Doabia, Addl. A. G., Punjab.

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DAYA CHAUDHARY, J.

Petitioners Prem Singh, Nishan Singh and Jarnail Singh have filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of impugned order dated 26.06.2018 (Annexure P-3) passed by State Election Commission, Punjab (respondent No.2) and also order dated 12.04.2018 (Annexure P-2) passed by Sub Divisional Magistrate-cum-Electoral Registration Officer, Patran, Distt. Patiala (respondent No.3).

The grievance of the petitioners in the present petition is that they are residents of village Kua Diary, Gobindpura @ Pains, Tehsil Patran, Distt. Patiala. Their names were duly reflected in the voter list prepared after de-limitation of Wards of Gram Panchayat Kua Diary. One Gurmej Singh (respondent No.4) who is also resident of the same village filed

certain objections/representation before the competent authority and approached this Court as well by way of filing CWP No.2336 of 2018 stating that the objections filed by him have not been decided. Vide order dated 22.02.2018 passed by this Court, the official respondents were directed to consider and decide the objections/representation as expeditiously as possible. However, respondent No.3 *i.e.* the Sub Divisional Magistrate-cum-Electoral Registration Officer, Patran vide order dated 12.04.2018 ordered for shifting of votes of the petitioners from Gram Panchayat Kua Diary to Ward No.8 of Gram Panchayat Dhutaal. As per case of the petitioners, they were never summoned by respondent No.3 before passing order dated 12.04.2018. Even they were not aware about deletion of their names. Thereafter, they approached the authorities concerned and impugned order dated 12.04.2018 was passed. Appeal filed by the petitioners was also dismissed vide order 26.06.2018 (Annexure P-3). Both the orders *i.e.* dated 12.04.2018 (Annexure P-2) as well as 26.06.2018 (Annexure P-3) are subject matter of challenge in the present petition.

Learned counsel for the petitioners submits that the appeal has been dismissed on the ground that it does not fall within the purview of Section 33 of the Punjab State Election Commission Act, 1994 (for short - “the Act”) and the State Election Commission has no power to pass order dated 12.04.2018 as it relates to Assembly Constituency 117-Shutrana. Learned counsel further submits that it cannot be said that the votes relate to Assembly Constituency of 117-Shutrana as the same relate to various Gram Panchayats. Learned counsel also submits that the appeal filed by the

petitioners under Section 33 of the Act was maintainable and it should have been decided on merits but the same has not been decided. Learned counsel further submits that order dated 12.04.2018 was passed without giving any opportunity of hearing to the petitioners and nothing was said on merits. The appeal was also dismissed on technical grounds and as such, both the orders are liable to be set aside. At the end, learned counsel for the petitioners submits that the petitioners would be satisfied in case directions are issued by this Court to the appellate authority to pass fresh order after considering representation of the petitioners.

Learned State counsel on the basis of reply, which is already on record, submits that order dated 12.04.2018 was passed in compliance with the direction issued by this Court in CWP No.2336 of 2018 as there is a specific direction to the official respondents to consider and decide the complaint/representation. He also submits that in case the petitioners are still aggrieved, they are at liberty to lodge their claim before the Electoral Registration Officer concerned and action can be taken after verifying the facts.

Heard arguments of learned counsel for the petitioners. We have also perused the impugned orders dated 12.04.2018 and 26.06.2018.

It has been simply mentioned in the order dated 26.06.2018 that the appeal has been filed under Section 33 of the Punjab State Election Commission Act, 1994 and the documents on the file do not show any order passed by Punjab State Election Commission or officer working on behalf of State Election Commission. Order dated 12.04.2018 for deletion/addition of votes passed by Sub Divisional Magistrate-cum-Electoral Registration

Officer, Patran relates to Assembly Constituency 117-Shutrana, which is under the purview of State Election Commission, Punjab.

Section 31 of Act provides for power with Electoral Registration Officer for a constituency to make correction in the electoral rolls after being satisfied and on conducting any inquiry. It further provides that before taking any action while transferring votes to other place a reasonable opportunity of hearing is necessary to be given. Section 31 of the Act is reproduced as under :-

“31. Correction of entries in electoral rolls.- If the Electoral Registration Officer for a constituency, on application made to him or on his own motion, is 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 respect; or

(b) should be transposed to another place in the roll on the ground that the person 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 has 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 directions, 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 a ground specified under clause (a) or clause (b) or under clause (c), except in the case of death of a person, 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.

Admittedly, before taking any action, the petitioners were not given any reasonable opportunity of hearing and the impugned order dated

12.04.2018 has been passed. While shifting the votes of the petitioners along with others from Gram Panchayat, Kua Diary to other Gram Panchayat, the petitioners should have been heard and reasons should have been recorded. Even the appeal filed by the petitioners was dismissed without mentioning any reason. In view of the provisions of Section 31 (b) of the Act, the appeal was maintainable under Section 33 of the Act and it should have been decided on merits. However, nothing has been said on merits and the appeal was wrongly dismissed on technical grounds.

In view of above, impugned order dated 26.06.2018 deserves to be set aside. Accordingly, the present petition is allowed. Respondent No.2 *i.e.* State Election Commission, Punjab is directed to reconsider the appeal of the petitioners on merits and decide the same as expeditiously as possible without causing any delay. In case the petitioners are required to be heard, they be given opportunity of hearing. The necessary exercise be done within a period of four weeks from the date of receipt of certified copy of this order.

**(DAYA CHAUDHARY)
JUDGE**

01.05.2019
sunil yadav

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No