

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

CWP-25950-2024
Reserved on: 28.11.2024
Pronounced on: 13.12.2024

Gurmej Singh
.....Petitioner

Versus

State of Punjab and others
.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Raj Kumar Garg, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for the issuance of a writ of Certiorari for quashing the order dated 20.09.2024 (Annexure P-16), passed by respondent No.3, vide which the appeal of the petitioner was dismissed, which was filed against the finalization of revision of electoral rolls as was done by respondent No.4 vide order dated 07.01.2024 (Annexure P-12). The petitioner further prayed that the elections of Gram Panchayat Kua Diary, on the basis of electoral rolls dated 07.01.2024, be stayed during the pendency of the writ petition.

Facts of the case

2. The petitioner is resident of Village Kua Diary, Tehsil Patran, District Patiala and his name was duly reflected in the Voter List prepared after delimitation of Wards in Gram Panchayat Kua Diary.

3. Gram panchayat Kua Diary came into existence in the year 2007 and was carved out from village Gobindpura Paind, Dotal and Shutrana, existing in Block Patran, District Patiala. After coming into existence of village Kua Diary, the total number of the voters was 257 and for the panchayat elections to be conducted in the year 2008, the voters' list of the gram panchayat Kua Diary was issued, wherein, only those persons who were living / residents of village Kua Diary, thus were registered as voters. The petitioner is a resident and voter of Gram Panchayat Kua Diary shown at Sr. No.145.

4. Thereafter, the elections were held in the year 2013 and in the year 2018. In 2018, five wards were carved, thus with an electoral strength of 313 votes. The apposite voter list was published on 25.07.2018.

5. In the year 2018, the petitioner raised objections regarding certain votes which were shown in village Kua Diary, despite their belonging to village Sahibzada Ajit Singh Nagar, Shutrana and Dotal. The objections were filed before the Electoral Registration Officer, and when the same were not considered, therebys the petitioner filed CWP-2336-2018. In the said writ petition, the official respondents were directed to consider and decide the representation. Subsequently, the matter was considered and an order became passed whereby the respondents were shown to be the residents and voters of gram panchayat Duta, having H.B. No.173, but in the assembly elections, they were shown having their voting rights in gram panchayat Gobindpura Paind which falls under H.B. No.168.

6. The elections of gram panchayats were held in July 2018

Diary and of gram panchayat Dutal. In the wardbandi of GP Kua Diary, as mentioned above, thus 5 wards were carved having 313 votes and the respondents were shown in the wardbandi of G.P. Dutal and they were shown in ward No. 8 from the serial No.253 to 296.

7. In view of the order dated 22.02.2018, respondent No.4 i.e. Sub-Divisional Magistrate (SDM), Patran, passed an order whereby the votes of private respondents were ordered to be transferred to ward No.8 of gram panchayat Dutal and some voters were shown to be the voters of Sahibzada Ajit Singh Nagar, Shutrana, and were entered in ward No.4 thereof. The said process was done on the basis of the report of the Halqa Patwari where they were shown to be “ordinarily resident” of those villages.

8. The private respondents filed an appeal against the order (Annexure P-4) before State Election Commission, Punjab. The said appeal was dismissed by the State Election Commission, Punjab, on 26.06.2018 (Annexure P-5), whereby it was observed that “a perusal of the petition shows that the appeal has been filed under Section 33 of the Punjab State Election Commission Act, 1994, but documents placed on the file do not show any order passed by Punjab State Election Officer working on behalf of the State Election Commission, Punjab, rather the order dated 12.04.2018 for deletion/addition of votes has been passed by the Sub Divisional Magistrate-cum-Electoral Registration Officer, Patran, relating to Assembly Constituency of 117-Shutrana, which is not under the purview of State Election Commission”.

9. Thereafter, the respondents No.7 to 9 filed CWP No.17411 of 2018 whereby they challenged the order dated 12.04.2018 and dated

26.06.2018. The said writ petition was accepted and order dated

26.06.2018 was set-aside and the lis was remanded to the State Election Commission, Punjab, to re-consider on merits the appeal of the petitioners (in CWP-17411-2018).

10. The respondents filed CWP No.17411 of 2018 before this Court and the said writ petition was decided and it was ordered that the respondent No. 3 i.e. State Election Commission Punjab, thus shall reconsider the appeal of the petitioners on merits and decide the same as expeditiously as possible without causing any delay by giving an opportunity of hearing. The necessary exercise was ordered to be done within a period of four weeks from the date of receipt of certified copy of this order.

11. On remand, the State Election Commission, Punjab heard the appeal in detail on 11.06.2019 and dismissed the appeal again by passing the following order: -

“The petitioners have to approach the Electoral Registration Officer for their names to be added in the electoral rolls for their names to be added in the electoral rolls meant for the Panchayat elections who will takes the decision as per the provisions of Sections 28, 29 and 30 of the Punjab State Election Commission Act, 1994.”

12. The petitioner then filed appeal before the State Election Commission on 08.01.2024 (Annexure P-13). Nothing was done by the State Election Commissioner in the appeal, then the petitioner filed CWP No.19061 of 2024 in this Court. This Court vide order dated 08.08.2024 (Annexure P-14) directed the respondent No. 1 to decide the appeal within 4 weeks, relevant paragraph whereof becomes extracted hereinafter.

“5. Without commenting on merits of the case, the petition is disposed of with a direction to the concerned authority/ respondent No.3 to consider and decide pending appeal dated 08.01.2024 (Annexure P-13) of the petitioner and pass an appropriate reasoned order, in accordance with law, preferably within a period of 04 weeks from the date of receipt of copy/ production of this order.”

13. In pursuance to the orders of this Court, the respondent No.3 heard the appeal and passed an order dated 20.09.2024 that on the directions of the State Election Commissioner, the SDM-cum-Registration Officer was asked to constitute a committee vide letter dated 06.09.2024. On this, a committee comprising of BDPO, Tehsildar, Patwari and Panchayat Secretary, thus became constituted. However, on 09.09.2024, only a report of Panchayat Secretary was sent, in which the Panchayat Secretary without knowing the implications, has mentioned that the Aadhar cards of the voters and voter cards, have been prepared in Kua Diary, Gobindpura Paind. It is pertinent to mention that the Panchayat Secretary is not aware that gram panchayat Kua Diary and gram panchayat Gobindpura Paind, are distinct entities and having their own constituencies and without any basis he sent his opinion, that the votes of these persons should be registered in gram panchayat Kua Diary. The said report was sent to the Additional Deputy Commissioner (D), Patiala.

14. The SDM reported to the ADC (D), Patiala that as per the report of the Patwari all these persons (respondents) are residents of gram panchayat Dotal, having their residence in khasra numbers which are gair mumkin deras. Further, reported qua the report of the Panchayat Secretary and further stated that because the Hadbast number of gram

168, therefore, their votes be registered in the gram panchayat Kua Diary. There is no report given by the committee constituted for this purpose. The Deputy Commissioner sent his report that the votes of respondents have been shown in village Kua Diary but according to revenue department, they are residents in khasra numbers of Village Dutal. Therefore, in view of the field report, a direction is sought for further action.

15. Without considering the reports received from the Deputy Commissioner and Field Staff, the respondent No.3 dismissed the appeal vide order dated 20.09.2024 (Annexure P-16) by giving contradictory findings, relevant paragraph whereof becomes extracted hereinafter.

“9. As per election law, a voter is entitled to have his vote registered at one place and as per the definition above, it does not lie in the face of the objector to challenge his vote only on the ground that he owns or is in possession of a dwelling house (in this case a gair mumkin dera) in that constituency. Field reports showing the revenue history of the village Kua Diary vis-a-vis- Dutal, Gobindpur Paidn, Shutrana, attest to their contiguity. Further, under Sections 31 and 32 of the Punjab Election Commission Act, 1994, it is the Electoral Registration Officer who is the Competent Authority not only for preparation and revision of electoral rolls but also for correction of entries in electoral roll and inclusion of names in electoral rolls.

10. Under the circumstances and conspectus as stated above, I am not inclined to interfere with the status quo. Appeal is rejected. Copy of this order be sent to the concerned authorities.”

16. A reading of the impugned order (Annexure P-16) underscores the fact that the substratum of the controversy, which occurs in the instant case, relates to the enlistment of the private

respondents, in the instant writ petition, as voters in Gram Panchayat Kua Diary, despite theirs being “ordinarily residents” of villages Sahibzada Ajit Singh Nagar, wherebys a grievance is raised by the petitioner qua the private respondents being enlisted as voters in village Kua Diary. The said grievance became rested on the factum that the private respondents in the instant writ petition, did not hold any residence in any of the five wards of Gram Panchayat Kua Diary.

17. The said grouse become rested on the report of the Patwari, wherein he detailed that the present respondents are residents of village Kua Diary.

Submissions of the learned counsel for the petitioner

18. The learned counsel for the petitioner argues that since subsequently, the SDM, Patran, took up the matter to decide whether the votes of the respondents are to be added in the electoral rolls of village Kua Diary, thus on the basis of theirs being “ordinarily resident” in village Kua Diary. However, the SDM Patran, even without summoning the petitioner and other persons, rather under political pressure passed an order on 12.09.2019, wherebys, it was ordered that the votes of these respondents be entered in village Kua Diary, as they aspire to get themselves registered as voters in gram panchayat Kua Diary, despite theirs being ordinarily not residing in gram panchayat Kua Diary.

19. The private respondents No.7 to 9 are contended to be the residents of gram panchayat Dutal, as their names are duly mentioned in the voter list in ward No.8 thereof, besides when they have also voted in the elections held in 2018, to gram panchayat Dutal. However, the authority concerned, without considering these facts, rather in the

(Annexure P-8) whereby the private respondents were entered as voters in village Kua Diary.

20. For determining whether the enlistment of the private respondents in the instant writ petition as voters in village Kua Diary was or not lawfully done, it is relevant to reproduce the provisions of Section 28 and 29 of Punjab State Election Commission Act, 1994 (hereinafter referred to as 'the Act of 1994').

***“28. Conditions of registration.** - Subject to the foregoing provisions of this Chapter, every person who, -*

(a) is not less than eighteen years of age on the qualifying date; and

(b) is ordinarily resident in a constituency; shall be entitled to be registered in the electoral roll for that constituency.

***29. Meaning of ordinarily resident.--** (1) For the purposes of this section a person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns or is in possession of, a dwelling house in that constituency.*

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

(3) A member of Parliament or of the State Legislature shall not during the term of his office cease to be ordinarily resident in his constituency by reason of his absence from that constituency in connection with duties as such member.

(4) A person kept in any place meant for the sole purpose of treatment of persons suffering from any mental illness or defectiveness or any other serious disease or who is detained in prison or other lawful custody at any place, shall not by reason thereof be deemed to be an ordinarily resident of that place.

(5) Any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date.

(6) Any person holding an office in India which has been declared by the State Government in consultation with Election

Commission to be an office to which the provisions of this section shall apply, shall be deemed to be ordinarily resident on any date in the constituency in which, but for the holding of any such office, he would have been ordinarily resident on that date,

(7) The statement of any such person as is referred to in sub-section (4) or subsection(S) made in the prescribed form and verified in the prescribed manner that but for his having the service qualification or but for his holding any such office as is referred to in sub-section (6), he would have been ordinarily resident in a specified place on any date, shall, in the absence of evidence to the contrary, be accepted as correct.

(8) The spouse of any such person as is referred to in sub-section (3) or sub-section (4), shall if he or she be ordinarily residing with such person, be deemed to be ordinarily resident in the constituency specified by such person under sub-section (5).

(9) If in any case, a question arises as to of which place a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the relevant facts of the case and with reference to such rules, as may be made in this behalf.

(10) In sub-section (5) and sub-section (7) service qualification means—

- (a) being a member of the Armed Force of the Union; or*
- (b) being a member of a force to which the provisions of the Army Act, 1950 (Central Act 46 of 1950) have been made applicable whether with or without modifications;*
- or*
- (c) being a member of an Armed Police of the State, who is serving outside the State; or*
- (d) on being a person who is employed under the State Government, on a post outside India.*

21. It is not disputed that the private respondents were to be enlisted as voters as therebys they would exercising their franchise in the elections to be held to the respective democratic offices of the Gram Panchayat concerned, besides to enable them to exercise their franchise

for electing their representative to the State Legislative Assembly and to their representative to the Union Parliament.

22. Be that as it may, since the dispute relates to the private respondents being or being not “ordinarily residents” respectively of village Kua Diary or village Shutrana, therebys it is necessary to embark upon assigning a purposeful connotation to the coinage “ordinarily resident”. In the said regard the (supra) extracted provisions, as borne in Section 29 of the Act of 1994, do unfold, that a person shall not be deemed to be “ordinarily resident” in a constituency rather only on the ground that he owns or is in possession of a dwelling house in that constituency.

23. Though therebys the (supra) definition controls the meaning of the coinage “ordinarily resident” but the said control is *prima facie* to be employed for determining whether a voter is ordinarily resident in a “constituency”. Therefore, the implication thereof though is that, the legislation intended to define the coinage “ordinarily resident”, in the manner detailed in Section 29 of the Act of 1994, thus to cover a situation wherebys a citizen, who otherwise becomes entitled to becoming enlisted as a voter, does therebys exercise his/her franchise, in a “constituency”. Necessarily though *prima facie* therebys a “Constituency” is to be construed to either a Legislative Constituency or a Parliamentary Constituency. Though, the above connotation to be employed to the statutory coinage “ordinarily resident” but covers an Assembly and a Parliamentary Constituency and though does not cover the instant situation relating to the enlistment of an eligible voter to enable him/her to vote in any Gram Sabha elections.

24. However, even if such a specific situation is not with utmost forthrightness statutorily covered within the ambit of the coinage “ordinarily resident”, whereby an eligible voter can seek his enlistment for voting in a revenue estate. But since a revenue estate is the micro unit of a larger micro unit i.e. respectively of Assembly constituency(ies) or a Parliamentary constituency(ies).

25. Resultantly, thereby when an eligible voter has to be initially enlisted as such in a micro level of a macro constituency(ies), so that thereby he becomes endowed the privilege to also exercise his franchise both in Parliamentary election(s), and in Assembly elections.

26. In essence thereby this Court, can yet proceed to analyse whether the (supra) import of the statutory coinage “ordinarily resident”, thus also appertains to an ordinarily resident person rather in a Gram Sabha area, thus thereby becoming also entitled to exercise his/her franchise in any Gram Sabha elections. Subsequently this Court can also proceed to determine whether the private respondents were to be ably enlisted as voters in village Kua Diary, and/or whether they were entitled to become enlisted as voters in Sahibzada Ajit Singh Nagar, Shutrana or Dutal.

27. In the above endeavour, though the statutory coinage “ordinarily resident” has been statutorily conveyed the connotation, that any voter would not be “ordinarily resident” in a constituency or in any revenue estate concerned, thus merely on the ground that the he owns or is in possession of a dwelling house in that constituency/revenue estate.

28. Resultantly, prima facie even if the private respondents, did own some dwelling unit, in village Kua Diary which is a revenue estate

attendant evidence as comprised in the report of the Patwari, thus prima facie suggests that they were ordinarily residing in Kua Diary. Moreover, when the Aadhar Card and Voter Card issued vis-a-vis the respondents declare that they are displayed therein qua theirs being residents of Kua Diary. Therefore, Kua Diary is as such prima facie acquiesced by the private respondents to be the place wherein they ordinarily reside.

29. In aftermath, prima facie the private respondents were to be enlisted as voters in village Kua Diary, than in Sahibzada Ajit Singh Nagar, Shutrana or Dutal, as in case they are permitted to be enlisted as voters in two revenue estates, thereby they prima facie shall be concomitantly voting twice, in any assembly elections or in Gram Sabha elections, as such their voting twice may vitiate the results of the elections.

30. Be that as it may, in case the private respondents have already exercised their franchise and that too singularly in the revenue estates, wherein they were enlisted, as such, when they have exercised their franchise which otherwise they were so entitled to, besides when the elections have already concluded. Resultantly, the order impugned before this Court (Annexure P-16) does not require any further interference being made, unless in an election petition it is depicted, that apart from the above dual enlistment taking place, thus has further caused the further ill effect, that the voters rather than singularly proceeding to exercise their votes in the revenue estates, yet theirs also proceeding to exercise their votes in the adjoining thereto revenue estate, wherein, they also may have been enlisted as voters, as thereby

31. As such, the remedy to the present petitioner, on the pronouncement of the result of the elections, is to file an election petition before the Election Tribunal concerned. On receiving such a petition, the same shall be expeditiously decided.

Final Order of this Court.

32. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

13.12.2024
Ithlesh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No