

(2005) 2 MPJR 300

Madhya Pradesh High Court

Case No: Writ Petition No. 4736 of 2004

Chandra Bhan Patel

APPELLANT

Vs

State of M.P. and
Others

RESPONDENT

Date of Decision: May 13, 2005

Acts Referred:

Representation of the People Act, 1950 " Section 20

Citation: (2005) 2 MPJR 300

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

Bench: Single Bench

Advocate: J.P. Pandey, for the Appellant; P.N. Dubey, Dy. Advocate General For respondents no. 1 to 3, Mr. V.S. Shrotri with Mr. Gautam Prasad, Advocate For respondent no. 4 and Mr. R.K. Samaiya, Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.K. Lahoti, J.

Both these petitions are being decided by this order as the facts are common, matter relates to deletion of name of petitioners from the voter list

and both petitioners are husband and wife.

In W.P. No. 4736/04, petitioner Chadra Bhan Patel has sought following reliefs in the petition:

1. The Hon"ble Court be pleased to quash the order dated 16-10-2004 passed by Tahsildar (Registration Officer) Annexure P/11 and order

dated 11-11-2004 passed by Sub-Divisional Officer as Annexure P/13.

The hon"ble Court be further pleased to command the respondent to delete the name of the petitioner from Tahsil Hatta and name shall be

included in Gram Bela which comes under Gram Panchayat Bela-Purwa.

The Hon"ble Court be further pleased to command the respondent No. 2 to make proper enquiry in this regard.

Any other relief as may be considered fit and proper by the Hon"ble Court keeping in view the facts and circumstances of the case.

In W.P. No. 4746/04, petitioner Dropti Patel has sought following reliefs in the petition:

1. The Hon"ble Court be pleased to quash the order dated 16-10-2004 passed by Tahsidar (Registration Officer) Annexure P/8 and order dated 11-11-2004 passed by Sub-Divisional Officer as Annexure P/9.

The hon"ble Court be further pleased to command the respondent to delete the name of the petitioner from Tahsil Hatta and name shall be

included in Gram Bela which comes under Gram Panchayat Bela-Purwa.

The Hon"ble Court be further pleased to command the respondent No. 2 to make proper enquiry in this regard.

Any other relief as may be considered fit and proper by the Hon"ble Court keeping in view the facts and circumstances of the case.

For the convenience, the facts are taken from W.P. No. 4736/2004.

Petitioner Chandra Bhan Patel is husband of Smt. Dropti Patel. Petitioner Chandra Bhan Patel was elected as Sarpanch from Gram Panchayat,

Belapurwa, Tahsil Batiyagarh, District Damoh in the election held in the year 2000. Before his election, his wife Smt. Dropti Patel (petitioner of

W.P. No. 4746/04) was elected Sarpanch from the same village between 1994 to 2000. Their names were appearing in the voter-list of Gram

Bela. Petitioners' names were also appearing in the voter list Hata Municipal area. Petitioners knowing this fact applied for deleting their name

from the voter list Hata Municipal area. Respondent Ram Kumar also sought deletion of the names of petitioners from the voter list of village Bela.

The Tahsildar directed deletion of names of the petitioners from voter list of Gram Bela. Petitioners filed appeals before the Sub-Division Officer,

but the appeals were dismissed by orders dated 11.11.2004. These orders are challenged in these petitions.

Contention of the petitioner Chandra Bhan Patel are as under:

(a) That, he was not aware that his name was appearing in the voter list of municipal area Hata. On knowing it he immediately moved to authorities

for deletion of his name from the voter list of Hata.

(b) That, he never casted vote in municipal area Hata and in fact he is not an ordinarily resident of Hata. Though he is having house property at

Hata, but it is his temporary residence while he goes in Hata. His children are studying at Bela.

(c) That, ordinary residence of petitioner is village Bela where he is residing and is having landed property. In last two elections, firstly his wife

contested the election of Sarpanch and elected. Thereafter, petitioner contested the election and elected. Continuously, he is residing in the village

and is discharging his duties as Sarpanch. No complaint was made during his tenure that he is not residing in village Bela or he is residing at Hata.

(d) that, the deletion of his name from Gram Panchayat, Bela Purwa is because of the false complaint of respondent no. 5 who was interested in

the deletion of the name of petitioner from the voter list and in fact is rival of the petitioner. Petitioner's children are studying in village Bela. In this

regard, petitioner has placed on record school certificate (Annexure P/7) about his daughter Ruchi, aged 11 years who was studying in class III in

the academic session 2002-03 as a regular student. Another daughter is Ritu studying in Class V in academic session 2001-02. Apart from this,

petitioner has placed on record ration card (Annexure P/1) issued on 2.8.2002 by the Secretary of Gram Panchayat, Bela Purwa, copy of Rin

Pustika is Annexure P/2, Saving Bank Account pass-book of State Bank of India in which petitioner's address is shown at Village Bela, Identity

Card issued by the Election Commission of India dated 14.6.1995 in which petitioner's address has been shown at village Bela, voter list and

attendance register of members of Gram Sabha. During the course of argument, petitioner also contended that respondent no. 5 is having distant

relation of son-in-law of one Hon"ble State Minister and because of aforesaid influence, name of the petitioner was deleted from the voter list.

Similar contentions are made in the petition of Smt. Dropti Patel.

Respondents filed reply and contended that petitioners name is appearing in the voter list of municipal area Hata and as his name is appearing in the

municipal area of Hata, petitioner is not entitled for continuation of his name in the voter list of village Bela. The authorities have rightly deleted his

name from voter list of village Bela. Voter list of municipal election was finalized on 29.9.2004 and the petitioner filed application on 5.10.2004

which was beyond the period for application for correction in the voter list and as respondent no. 5 raised aforesaid objection that the petitioner is

resident of Hata municipal area and his name deserves to be deleted, the authorities rightly deleted the name of the petitioner from the voter list of

village Bela which order is in accordance with provisions of Section 5 of the Act, which provides that 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. It is prayed that these petitions have no merit and may be

dismissed.

To appreciate rival contentions of the parties, it is not in dispute that petitioner's name is appearing in the municipal area of Hata. It is also not in

dispute that petitioner's name was appearing in the voter list of village Bela. The petitioner is holding the office of Sarpanch at present and previous

to him, his wife Smt. Dropti Bai was Sarpanch of Gram Panchayat, Bela Purwa. For last 10 years, wife and husband were respectively holding the

office of Sarpanch. Though one complaint has been placed on record that the petitioners were not attending the meeting of Gram Panchayat or

were not residing in the village. But what happened on it, is not on record. It is admitted by petitioner that he is having house property in municipal

area Hata. But merely the petitioner is having house property at Hata will not be a ground to delete the name from the voter list of village Bela.

While considering this question, it is to be seen what is his ordinary residence and whether the petitioner is entitled to continue his name in the voter

list of village Bela.

Petitioner has stated that he was not aware that his name is appearing in the voter list of municipal area Hata and he never used franchise at Hata

and on knowing it that his name is included in the voter list of Hata he immediately moved to the concerned authority for deletion of his name from

municipal area Hata. There is no allegation against the petitioner that he has used franchise in municipal area Hata. So far as the allegation that

petitioner's children are studying at Hata or his children got birth at Hata is concerned, this has no relevance in the present case. Because merely,

the children are studying at Hata which is better place for education or the birth of children took place at Hata will not be a ground to presume that

the petitioner is an ordinarily resident of Hata. It is a matter of common sense that at the time of delivery, usually person goes to a place whereby

better facilities are available. Similar is the position in education. Every citizen wants that his children should get a better education. Apart from this,

petitioner has placed on record certificates issued by the Principal of school of village Bela showing that both daughters of petitioner namely Ruchi

and Ritu were studying in village Bela in past. The contention of the petitioner that he is having residence in village Bela also finds support from this

fact. The Apex Court recently considered this question in Election Commission of India and Another Vs. Dr. Manmohan Singh and Others, held

thus:

11. Section 20 of the Representation of the People Act, 1950 defines "ordinarily resident". Sub-sections (4), (5) and (7) thereof are relevant here:

they read thus:

(4) Any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which the

provisions of the sub-section 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.

(5) The statement of any such person as is referred to in sub-section (3) or sub-section (4) 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 (4) 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.

(6)

(7) 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 and to such rules as may be made in this behalf by the Central Government in consultation with the Election Commission.

(12) That the first respondent was at the relevant time a person holding an office to which the provisions of these sub-sections applied is not in

dispute.

(13) Rule 6 of the Registration of Electors Rules, 1960 states.

Statement u/s 20-(1) Every person who holds a declared office or has a service qualification and desires to be registered in the roll for the

constituency in which, but for holding such office or having such qualification, he would have been ordinarily resident, shall submit to the registration

officer of the constituency, a statement in such one of the Forms 1, 2, 2-A and 3 as may be appropriate.

(2) Every statement submitted under sub-rule (1) shall be verified in the manner specified in the Form.

(3) Every such statement shall cease to be valid when the person making it ceases to hold a declared office or, as the case may be, have a service

qualification.

By reason of sub-section (4) of Section 20 aforequoted, a person who holds a declared office is deemed by law to be, on any date, an ordinarily

resident of a constituency in which he would ordinarily have resided but for the fact that he holds such declared office. For this purpose, by reason

of sub-section (5) of Section 20, the statement of the holder of the declared office, made in the form and verified as required, must be accepted as

correct ""in the absence of evidence to the contrary"". Where the question of such a persons ordinary residence does arise, it has, by reason of sub-

section (7) of Section 20, to be ""decided by reference to the facts of the case"". (The subsection speaks of rules in this behalf but none have been

framed).

In Union of India and Others Vs. Dudh Nath Prasad, held thus:

13. Section 20 which is part of the law enacted for purposes of election to Parliament or the State Legislature contemplates many categories of

persons including those who are in service. It lays down as to when they would be treated to be ""ordinarily residing"" in a particular constituency.

Sub-section (1) and sub-section (1-A) of Section 20 are couched in a negative language. Sub-section (1) of Section 20 provides that if a person

holds or is in possession of a dwelling house in a particular constituency, he would not, merely on that ground, be deemed to be ""ordinarily

resident"" in that constituency. Sub-section (1-A) provides that temporary absence of a person from the place of his ""ordinary residence"" would be

ineffective and a person would not cease to be an ""ordinary resident"" in that constituency merely for that reason. Thus, in determining the question

whether a person was ordinarily residing in a particular constituency, the factors mentioned in sub-section (1) and subsection (1-A) of Section 20

alone would not be determinative of the status and the question would have to be determined on a consideration of all other relevant factors. This is

also clear from a reading of sub-section (7) of Section 20 which lays down that if a question arises as to whether a person was ordinarily residing

in any constituency at the relevant time, it would be determined with reference to all the facts of the case as also with reference to the rules that may

have been made in that behalf by the Central Government in consultation with the Election Commissioner.

The word "reside" has been defined in Oxford Dictionary as "dwell permanently or for a considerable time; to have one's settled or usual abode;

to live in or at a particular place", The meaning therefore, covers not only the place where the person has a permanent residence but also the place

where the person has resided for a "considerable time.

In Black's Law Dictionary, 5th Edn., the word "reside" has been given the following meaning:

Live, dwell, abide, sojourn, stay, remain, lodge. To settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or

continuously, to have a settled abode for a time, to have one's residence or domicile; specifically, to be in residence, to have an abiding place, to

be present as an element, to inhere as a quality to be vested as a right.

In the same dictionary, the word "residence" has been defined as under:

Personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined

period, not infrequently, but not necessarily combined with design to stay permanently.

Bodily presence and the intention of remaining in a place, to

sit down, to stay in a place, to settle, to remain, and is made up of fact and intention the fact of abode and the intention of remaining, and is a

combination of acts and intention.....Residence implies something more than mere physical presence and something less than domicile.

If the two meanings referred to above are to be read along with the word "ordinarily, it becomes clear that a person, before he can be said to be

ordinarily residing" at a particular place, has to have an intention to stay at that place for a considerably long time. It would not include a flying visit

or a short or casual presence at that place.

The word ""reside"" came to be considered by this Court in Jagir Kaur and Another Vs. Jaswant Singh, in the context of the jurisdiction of the

Magistrate u/s 488 of the Code of Criminal Procedure, 1898, for entertaining the petition of a wife for maintenance. After considering the meaning

of the word ""reside"" in Oxford Dictionary, which we have already set out above, the Court observed as under:

The said meaning, therefore, takes in both a permanent dwelling as well as a temporary living in a place. It is, therefore, capable of different

meanings, including domicile in the strictest and the most technical sense and a temporary residence. Whichever meaning is given to it, one thing is

obvious and it is that it does not include a casual stay in, or a flying visit to, a particular place. In short, the meaning of the word would, in the

ultimate analysis, depend upon the context and the purpose of a particular statute. In this case the context and purpose of the present statute

certainly do not compel the importation of the concept of domicile in its technical sense.

(Emphasis supplied)

Considering the facts of this case in the light of the statutory provisions contained in Section 20 of the Representation of the People Act, 1950 as

also the provisions contained in para 5 of the ""Instructions"", since the parents of the respondent were, admittedly residing in District Howrah for

more than 30 years, they would be treated to be ""ordinarily residing"" in that district and the mere fact that they held some property in a village in

District Siwan in the State of Bihar would not affect their status.

Now the facts of this case may be seen, it is not in dispute that the petitioner's name was appearing in the voter list of village Bela since last so

many years. He contested the election of Sarpanch in the year 2000 and was elected by the people of Gram Panchyat, Bela Purwa as Sarpanch.

Immediate before it petitioner's wife Dropti Patel contested the election of Sarpanch from same Gram Panchayat and she was elected as

Sarpanch. Since last 10 years, husband and wife were Sarpanch and were enjoying the office respectively. Petitioner has categorically stated that

he was not aware about registration of his name in the municipal area, Hata. This fact has not been controverted by any cogent evidence that the

petitioner was having knowledge that his name is appearing in the municipal area, Hata or it was registered at the instance of petitioner or he ever

used his right of vote in that municipal area. If in the ignorance of the petitioner, his name is appearing in the municipal area, Hata then he cannot be

penalised in this regard. Petitioner on 05.10.2004 itself filed an application before S.D.O. Hata for deletion of petitioner"s name. Merely, last date

of filing such objection expired and his name could not be deleted, will not be a ground at present to delete the name of the person from the voter

list of village Bela. Petitioner has made a very specific relief that his name be continued in the voter list of village Bela and his name be deleted from

the municipal area, Hata. So far as the contention that children of the petitioner are studying at Hata, is concerned, there is no documentary

evidence on record in this regard. Even if it is assumed that petitioner"s children are studying at Hata, this will not be a ground that petitioner has

changed his ordinary residence at Hata. He is still holding the office of Sarpanch of Gram Panchayat, Bela Purwa. Since last 10 years, petitioner"s

ordinary residence can be presumed in village Bela. It is not a case where petitioner is seeking registration of his name in the voter list. Though, u/s

5 of the Act, no person is entitled to be registered in the list of voters if he is registered in the electoral roll relating to other local authority, but in

this case facts are peculiar. Petitioner contended that he was not having knowledge about registration of his name in the voter list of municipal area,

Hata. On knowing it he immediately moved for deletion of his name from the voter list of village Hata, but because of expiry of the period, his

name could not be deleted from the voter list of village Hata. In the aforesaid circumstances, petitioner who is an ordinary residence of village Bela

deserves to continue in the voter list of village Bela and the orders passed by the Registration Officer and appellate authority deleting the name of

the petitioner from village Bela deserve to be set aside and the petitioner"s name is directed to be continued in the voter list of village Bela, Gram

Panchayat Bela Purwa.

These petitions are allowed. Orders (Annexures P/11 and P/13 in W.P.No. 4736/04) and orders (Annexures P/8 and P/9 in W.P.No. 4746/04)

passed by the Registration Officer and the appellate authority respectively are hereby quashed and it is directed that petitioners" names shall

continue in the voter list of village Bela, Gram Panchayat Bela Purwa until and unless otherwise directed by the concerned authority in accordance

with law in this regard. However, in future as and when occasion arises petitioners name be deleted from the voter list of municipal of Hata.

No order as to costs.