

Office of the Election Authority

Under J&K Panchayati Raj Act, 1989

(Chief Electoral Officer, J&K)

“Greater Participation for a Stronger Democracy”

Subject: Appeal under J&K Panchayati Raj Act in pursuance to Court order dated 01-12-2018 in OWP No. 1221/2017 titled Sadaqat Ali and others versus State and others.

ORDER No. CEO/Pyt/2019/ 612

DATED: 09-07-2019

Appellant preferred afore titled appeal against the order No. ENT/R/12/3617-20 dated 14-01-2012 passed by District Panchayat Election Officer (Deputy Commissioner) Rajouri and Notification No. 01 DRDJ of 2017 dated 02-03-2017 on the ground that the voter list of ward No. 05 of Panchayat Panjgrain Upper-A and wards No. 06 and 07 Panchayat Panjgrain Upper-B respectively has been issued contrary to the factual position existing on ground and further, seeking direction to District Panchayat Officer to enter the name of the appellant and other inhabitants in the voter list of ward No. 5 Trutta Dhara falling in Panchayat Panjgrain Upper-A. Appellant is aggrieved that his name along with other inhabitants belonging and residing in Ward No. 05 Trutta Dhara of Panchayat Halqa Panjgrian Upper-A were illegally reflected/shown first on the voter list of ward No. 06 and then further shifted and reflected in the voter list of ward No. 07 of Panchayat Halqa Panjgrian Upper-B.

The instant appeal has been filed by appellant in pursuance to Court order dated 01-12-2018 passed by the Hon'ble Court in OWP No. 1221/2017, IA No. 01/2017 c/w CPOWP No. 311/2018 titled Sadaqat Ali and others versus State of J&K and others, operative part of the same is reproduced as under:

“...learned Counsel for the parties agree that the remedy against the order impugned is by way of an appeal before the Chief Electoral Officer, which can be availed. It is also agreed that any decision by the Chief Electoral Officer will only enure for future and shall not affect in any manner the elections already over. The delay, if any, in filing the appeal, either the same is filed within two weeks' from today shall be condoned by the appellate authority.

Disposed of accordingly along with connected IA.

CPOWP No. 311/2018

In view of the disposal of main petition, contempt petition also stands disposed of”;

Learned Counsel for appellant was heard who presented the case on behalf of appellant. Report in the matter was sought from District Panchayat Election Officer (Deputy Commissioner) Rajouri and the same was received on 08-05-2019.

According to the report:

- (i) The petitioners (which includes appellant in the instant appeal) were aggrieved of their names figuring in the voter list of Panchayat Panjgrain Upper-B and wanted their names to be incorporated in ward No. 05, Trutta Dara of Panchayat Panjgrain Upper-A, Block Panjgrain .
- (ii) The plea of the petitioners was rejected at various stages since the same was not based on the factual position and in this context inhabitants of Ward No.

05 Trutta Dara filed various writ petitions before the Hon'ble High court seeking similar relief viz, OWP No. 1545/2010 titled Mohd. Ayoub and others versus State and others, OWP No. 257/2011 titled Nazir Hussain and others versus State, OWP No. 443/2012 titled Nassar Hussain and others versus State and others and in pursuance to Hon'ble court's directions, official respondents, after affording opportunity of hearing to the local inhabitants and after perusing the available record, considered the claim of the petitioners which was found devoid of merit and hence rejected.

- (iii) In OWP No. 443/2012 titled Nassar Hussain versus State, respondents were directed by the Hon'ble High Court to consider the case of the petitioners treating the same as representation and pursuant to the said direction issued by the Hon'ble High Court, District Panchayat Election Officer (Deputy Commissioner) Rajouri directed District Panchayat Officer, Rajouri to consider the petitioner's claim on merit and the same was considered and was found without any merit and rejected by District Panchayat Officer, Rajouri.
- (iv) The voter list of ward No. 05, Panjgrain Upper-A which petitioners (appellant) are referring to was prepared and published on 02-08-2010, was only draft voter list and the voter list published on 03-01-2011 was final in which Dreari is shown as part of ward No. 06, Panjgrian Upper-B and not a part of ward No. 05, Trutta Dhara of Panchayat Panjgrian Upper-A. Petitioners (appellant) are residents of Dreari which falls in panchayat Panjgrian Upper-B. The claim of the petitioners (appellant) that they are residents of ward No. 05 Trutta Dhara (Panjgrian Upper-A) is wrong and baseless.
- (v) It has been further stated in the report that the instant case under consideration holds no merit and also, that the Panchayat elections have already been conducted in District Rajouri, based on the correct electoral rolls, hence the claim of the petitioners needs to be summarily rejected.

It is also noted that in terms of order dated 14-01-2012 (under challenge in the instant appeal) passed by District Panchayat Election Officer (Deputy Commissioner) Rajouri, it has been held that Dreari is situated between ward No. 5 (Trutta Darra) of Panchayat Halqa Panjgrian Upper-A and ward No. 06 (Nallah Upper) of Panchayat Panjgrian Upper-B and is about 1 ½ KM from Trutta Darra (ward No. 5) of Panjgrian Upper-A separated by forest land (which is connected through an under construction road). However, it is in close proximity to ward No. 06 (upper Nallah) of Panjgrian Upper-B. Also, in draft panchayat electoral roll 2011, the voters (95 in number) of Mohra Dreari were part of ward No. 5 (Trutta Darra) of Panjgrian Upper-A, however in the final Roll published on 03-01-2011, these voters were deleted from Trutta Darra of Panchayat Panjgran Upper-A and included in ward No. 06 (Nallah Upper) of Panchayat Upper-B by the Block Development Officer, Manjakote, in the capacity of Assistant Electoral Registration Officer under the J&K Panchayati Raj Act, 1989 and rules made thereunder.

As per J&K Panchayati Raj Rules 1996, electoral rolls of panchayat constituency emanate from the electoral roll prepared under J&K Representation of the People Act, 1957. Proviso to sub-rule 4 of Rule 4 of J&K Panchayati Raj Rules, 1996 is reproduced as under:

"...provided that a name included in the electoral prepared under the Jammu and Kashmir Representation of the People Act, 1957 corresponding to individual constituency

shall be automatically deemed to be part of the electoral roll in the said constituency under these rules except to the extent the same is deleted or modified in accordance with the directions of the Election Authority...”

Under section 19-A (b) of J&K Representation of the People Act, 1957, in case of electoral rolls, an appeal from an order of District Magistrate or District Collector or Additional District Magistrate or Executive Magistrate or an officer of equivalent rank, lies with Chief Electoral Officer. Section 19-A of J&K representation of the People Act, 1957 is reproduced as under:

19-A. Appeals

An appeal shall lie within such time and in such a manner as may be prescribed-

(a) to the District Magistrate or District Collector or Additional District Magistrate or Executive Magistrate or an officer of equivalent rank from any order of the Electoral Registration Officer under section 18 or section 19.

(b) to the Chief Electoral Officer, from any order of the District Magistrate or District Collector, Additional District Magistrate or Executive Magistrate or an officer equivalent in rank, as the case may, under clause (a).

In the instant case, the petitioner is aggrieved, *inter alia*, of the order dated 14-01-2012 passed by the District Panchayat Election Officer (Deputy Commissioner), Rajouri in which the claim of the petitioners (including appellant) to include the inhabitants of Mohra Dreari in the voter list of ward No. 05 Trutta Dhara of Panchayat Halqa Panjgrian Upper-A, was rejected.

Now, therefore, in due deference to Court order dated 01-12-2018, in view of the aforesaid report and the recommendations made, it transpires that the instant grievance/issue of the petitioners (appellant) has been agitated at various stages before various forums including Hon'ble High Court and after due consideration, found devoid of merit and accordingly rejected at each stage. Also, in view of the report of Deputy Commissioner, Rajouri, the voters listed in ward No. 06, Panjgrian Upper-B belong to the said ward and not to ward No. 05 of Panchayat Halqa Panjgrian Upper-A. Furthermore, the said voters belong to Mohra Dreari, which has physical contiguity with ward No. 06 of Panchayat Panjgrian Upper-B and is 1 ½ KM away from ward No. 05 of Panchayat Panjgrian Upper-A, separated by a forest land. Accordingly, claim projected by the petitioners (appellant) does not sustain and found devoid of merit for acceptance.

Sd/-


**Election Authority
Under J&K Panchayati Raj Act, 1989
(Chief Electoral Officer, J&K)**

No. *6463*/CEO /Pyt/2019/ *9032-33*
Copy to:

Dated: *9*-07-2019

1. Secretary to Government, Department of Rural Development Department, Civil Secretariat, Jammu/Srinagar for information.
2. Director General, Rural Development Department, Jammu for information.

3. District Panchayat Election Officer (Deputy Commissioner) Rajouri for information.


**Joint Chief Electoral Officer,
Jammu and Kashmir**
