

Inderjit Barua and Others

Vs

Election Commission of India

Transferred Cases Nos. 364-82 of 1984 with Civil Appeal No. 1219 of 1979 and Civil  
Miscellaneous Petition No. 29915 of 1984

(P. N. Bhagwati, Ranganath Misra, A. N. Sen, V. Khalid, V. B. Khalid JJ)

28.09.1984

ORDER

1. Transferred Writ Petitions 365 to 382 of 1984 challenge the validity of the elections to the Assam Legislative Assembly held in February 1983. The principal ground on which the validity of the elections has been challenged is that the electoral rolls were not revised before the elections in contravention of the provisions of Section 21 sub-section (2)(a) of the Representation of People Act, 1950 and the elections were held on the basis of the electoral rolls of 1979. Now it is undoubtedly true that the electoral rolls were not revised before the impugned elections were held but the Election Commission dispensed with the revision of the electoral rolls by an order dated January 7, 1983 made under the opening part of Section 21 sub-section (2) and this order has not been challenged in any of the writ petitions. Hence the impugned elections cannot be challenged on the ground that they were held on the basis of the electoral rolls of 1979 without revision of the electoral rolls. The petitioners also attacked the validity of the electoral rolls of 1979 on the ground that the Election Commission had, by the Press Note dated September 18, 1979, erroneously directed the electoral authorities in charge of revision of the electoral rolls not to delete the names of any persons from the electoral rolls on the ground of lack of qualification of citizenship, since the question of citizenship was not one which could be decided by the electoral authorities and the electoral rolls of 1979 were therefore invalid and the impugned elections held on the basis of the electoral rolls of 1979 were void. We do not think there is any substance in this contention.

2. In the first place, Article 329(b) of the Constitution bars any challenge to the impugned elections by a writ petition under Article 226 as also on the ground that the electoral rolls on the basis of which the impugned elections were held were invalid. The petitioners sought to escape from the ban of Article 329(b) by contending that they are challenging the impugned elections as a whole and not any individual election and that the ban of Article 329(b) therefore does not stand in the way of the writ petitions filed by them challenging the impugned elections. But, we do not think this escape route is open to the petitioners. There is in the Representation of the People Act, 1951 no concept of elections as a whole. What that Act contemplates is election from each constituency and it is that election which is liable to be challenged by filing an election petition. It may be that there is a common ground which may vitiate the elections from all the constituencies, but even so it is the election from each constituency which has to be challenged though the ground of challenge may be identical. Even where in form the challenge is to the elections as a whole, in effect and substance what is challenged is election from each constituency and Article 329(b) must therefore be held to be attracted.

3. We are of the view that once the final electoral rolls are published and elections are held on the

basis of such electoral rolls, it is not open to anyone to challenge the election from any constituency or constituencies on the ground that the electoral rolls were defective. That is not a ground available for challenging an election under Section 100 of the Representation of People Act, 1951. The finality of the electoral rolls cannot be assailed in a proceeding challenging the validity of an election held on the basis of such electoral rolls vide *Kabul Singh v. Kundan Singh* ((1970) 1 SCR 845 : (1969) 2 SCC 452 : AIR 1970 SC 340 : 42 ELR 325). Article 329(b) in our opinion clearly bars any writ petition challenging the impugned elections on the ground that the electoral rolls of 1979 on the basis of which the impugned elections were held were invalid.

4. We may also point out that in our opinion the electoral rolls of 1979 cannot be condemned as invalid. The counter-affidavits of Shri Ganesan, Secretary to the Election Commission and Shri Ashok Kumar Arora, Additional Chief Electoral Officer, Assam clearly show that the procedure prescribed by the Representation of People Act, 1950 for revision of the electoral rolls was followed. The Press Note dated September 18, 1979 on which considerable reliance was placed on behalf of the petitioners must be read along with the correspondence exchanged between the Chief Electoral Officer, Assam and the Secretary to the Election Commission prior to the issue of the Press Note and if all these documents are read as a whole, it is clear that no instructions were issued by the Election Commission to the Chief Electoral Officer not to decide the question of citizenship, if any objection to a particular entry in the draft electoral rolls was raised on the ground of lack of qualification of citizenship. All that the Election Commission directed the Chief Electoral Officer to do was to proceed on the basis that those whose names were already included in the previous electoral rolls - and we may point out that the electoral rolls of 1977 on the basis of which the elections to the Assam Legislative Assembly were held in 1978 were not at any time challenged by any of the petitioners - should be prima facie regarded as satisfying the qualification of citizenship and if any specific objection to the inclusion of any particular person on the ground of lack of qualification of citizenship was raised, it should be decided by the appropriate electoral authorities and the burden of showing that such person was not a citizen should be on the objector. We are informed and the affidavits also go to show that in fact a large number of objections based on the ground of lack of qualification of citizenship were disposed of by the appropriate electoral authorities after the publication of the draft electoral rolls. So far as the inclusion of any new names in the draft electoral rolls was concerned, the Election Commission directed that the utmost care should be taken to ensure that only citizens were enrolled as electors. We do not think that these directions given by the Election Commission were in any way in defiance of the provisions of the Representation of the People Act, 1950 and the Electoral Registration Rules, 1960 made under that Act. The electoral rolls of 1979 must therefore be regarded as not suffering from any legal infirmity, though we may reiterate once again that even if the electoral rolls of 1979 were invalid, that would not affect the validity of the impugned elections nor would a writ petition under Article 226 of the Constitution be maintainable for challenging the impugned elections.

5. We therefore dismiss Transferred Writ Petitions 365-82 of 1984. But, having regard to the important questions raised in the transferred writ petitions we direct that each party shall bear and pay his own costs of the transferred writ petitions.

6. That takes us to the Transferred Writ Petition 364 of 1984. This writ petition must also fail insofar as it challenges the Press Note dated September 18, 1979 as also the elections of 1983. There is a further prayer in this transferred writ petition that the electoral rolls on the basis of which the forthcoming elections to Parliament from Assam would be held should be revised before the holding of such elections as required by Section 21 sub-section (2)(a) of the Representation of People Act, 1950. So far as this prayer is concerned, Mr. A. K. Sen, learned

advocate appearing on behalf of the Election Commission, made a statement before us in the following terms :

The Commission will carry out revision of the elector-rolls for all constituencies in Assam in accordance with the Act and the Rules and such revision shall, as far as practicable be intensive revision and wherever it is not practicable to carry out intensive revision in any constituency or constituencies, the revision shall be summary or special revision.

This statement must allay the apprehension of the petitioners in this transferred writ petition, since it makes it clear that before elections to Parliament are held from Assam, the revision of the electoral rolls will be undertaken and wherever practicable, intensive revision shall be made and where it is not so practicable, there shall be summary or special revision. The learned counsel for the petitioner in this transferred writ petition contended that the electoral card which was used by the electoral authorities for the purpose of gathering information from the head of the family in each household did not call for information as to whether the persons whose names were given for being mentioned in the electoral card were citizens or not and there was therefore non-compliance with the requirement of Rule 8 read with Form IV of the Electoral Registration Rules, 1960. The answer given by Mr. A. K. Sen the learned counsel appearing on behalf of the Election Commission, was that Rule 8 is not mandatory but only directory and Form IV was not being adopted in practice because it was required to be sent by post and it was found that a large number of persons did not respond and send the form duly filled in by them and the Election Commission therefore, since 1972, resorted to the practice of having electoral cards which the enumerators would carry with them when they go from house to house for the purpose of intensive revision and fill it up in the presence of the head of the family. There was according to Mr. A. K. Sen no violation of Rule 8 read with Form IV in substituting the electoral card for Form IV. But, in order to eliminate this controversy, Mr. A. K. Sen made the following statement on behalf of the Election Commission :

For the sake of greater clarity and keeping in view the provisions of Section 2(c) of the Representation of the People Act, 1951 and Form 4 of the Registration of Electoral Rules, 1960, the word 'Citizen' shall be substituted for the word 'elector' wherever it occurs in the electoral card by issuance of a direction by the Election Commission.

The adoption of this formula in the electoral card would ensure that the person signing the electoral card would have to state whether the persons whose names have been given by him for being included in the electoral rolls are citizens or not.

7. It was also contended by the learned counsel appearing on behalf of the petitioners that the Election Commission should be directed to suo motu carry out an inquiry for the purpose of determining whether any of the persons whose names were included in the electoral rolls of 1979 or earlier electoral rolls were citizens or not and if they were not found to be citizens their names should be deleted from the electoral rolls. The learned counsel urged that the Election Commission should be directed to take, if necessary, assistance of the police or any other agency of the Government for this purpose and that no elections should be held from Assam unless and until this exercise was completed by the Election Commission. We cannot accept this contention advanced on behalf of the petitioner. It is entirely for the Election Commission to decide in the exercise of its discretion whether it should carry out any such revision suo motu under Rule 25 of the Electoral Registration Rules, 1960. We cannot direct the Election Commission to carry out such revision

which under the law it may do on its own. The only direction which we can give to the Election Commission is to carry out revision of the electoral rolls in accordance with the procedure prescribed in the Representation of People Act, 1950 and the Electoral Registration Rules, 1960. But since the Election commission has stated before us that it will carry out revision of the electoral rolls and that such revision shall, as far as practicable, be intensive revision and where it is not so practicable, it will be summary or special, we do not think it necessary to give any further directions to the Election Commission. When the draft electoral rolls are ready as result of such revision carried out by the Election Commission, it will be open to anyone whose name is not included in the draft electoral rolls to lodge a claim for inclusion of his name on the ground that he is an eligible elector and if the name of any person is erroneously included in the draft electoral rolls even though he is not a citizen, it will be equally open to anyone entitled to object to challenge the inclusion of the name of such person in the draft electoral rolls by filing an objection in accordance with the Electoral Registration Rules, 1960. Such claims and objections will have to be disposed of by the Election Commission in accordance with the provisions of the Representation of People Act, 1950 and the Electoral Registration Rules, 1960. It is neither desirable nor proper for us to lay down as to what quantum of proof should be required for the purpose of substantiating any such claims or objections lodged before the Election Commission. It would be for the appropriate electoral officer to consider and decide, in the light of such material as may be produced before him by the objector as also by the person whose name is sought to be deleted from the electoral rolls and such further material as may be available to him including the electoral rolls of the earlier years, whether such person is a citizen or not. We may point out that the appropriate electoral officer may also on his own, if he has on the material available to him including take steps to satisfy himself in regard to the citizenship of a person whose name is sought to be included or has been included in the electoral rolls.

8. However, one thing is clear that we cannot issue any direction to the Election Commission not to hold any elections to Parliament from Assam until the revision of the electoral rolls is completed. This proposition can no longer be disputed in view of the order made by this Court in *A. K. M. Hassan Uzzaman v. Union of Indian* ((1982) 2 SCC 218) where a Constitution Bench of this Court said : (SCC p. 219, para 1)

Secondly, though the High Court did not lack the jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked.

Though we cannot in law direct the Election Commission not to hold elections to Parliament from Assam until the revision of the electoral rolls is completed, we express the hope that the Election Commission will be able to complete the revision of the electoral rolls before the elections to Parliament are held from Assam and we hope and trust that the people of Assam will render their full cooperation to the Election Commission in the task of revision of the electoral rolls.

9. We accordingly dismiss the Transferred Writ Petition 364 of 1984 with no order as to costs.

10. In view of the urgency of the matter we have passed this Order setting out briefly our conclusions for which detailed reasons will be given by us in the judgment to be delivered later.

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