

Lakshmi Charan Sen and Others

Vs

A. K. M. Hassan Uzzaman and Others

Civil Appeals Nos. 739, 740, 741

(CJI Y. V. Chandrachud, D. A. Desai, Baharul Islam, A. P. Sen, E. S. Venkataramiah JJ)

08.05.1985

JUDGMENT

CHANDRACHUD, C.J. (for himself, Desai Sen and Venkataramiah, JJ.) -

1. There are four appeals and a transferred case before us. The appeals arise out of interim orders passed by a learned Single Judge of the Calcutta High Court on February 12 and 19, 1982 which were confirmed by him on February 25, 1982. Those orders were passed in a writ petition filed under Article 226 of the Constitution asking for the writs of mandamus and certiorari, directing that the instruction issued by the Election Commission should not be implemented by the Chief Electoral Officer and others; that the revision of electoral rolls be undertaken de novo; that claims, objections and appeals in regard to the electoral roll be heard and disposed of in accordance with the rules; and that, no notification be issued under Section 15(2) of the Representation of the People Act, 1951 calling for election to the West Bengal Legislative Assembly, until the rolls were duly revised.

2. Transferred Case 3 of 1982 is that very writ petition. It was withdrawn for hearing and final disposal to this Court by an order dated March 4, 1982. That writ petition was filed by eight persons against the Union of India, the Election Commission, the Chief Election Commissioner and the Chief Electoral Officer, West Bengal. The writ petitioners, who succeeded in obtaining interim orders from the High Court are in the array of respondents in the four appeals. Three out of those appeals are filed by persons who contend that the High Court ought not to have interfered with the election process which was imminent. The fourth appeal, No. 742 of 1982, is filed by the Election Commission of India, the Chief Election Commissioner and the Chief Electoral Officer, West Bengal. Their contention is that the High Court had no jurisdiction to entertain the writ petition by reason of Article 329(b) of the Constitution, that the election process which had already begun should not have been interfered with by the High Court and that the recommendation made to the Governor of West Bengal by the Election Commission under Section 15(2) of the Act of 1951 was being thwarted by "frivolous and baseless" objection raised by the writ petitioners.

3. The writ petitioners are enrolled as voters in the electoral roll of the West Bengal Legislative Assembly. The validity of several provisions of the Representation of the People Act, 1950, the Representation of the People Act, 1951, the Registration Electors Rules, 1960, and the Conduct of Election Rules, 1961 was challenged in the petition but, it is unnecessary to spend any time over that matter since, the validity of none of those provisions was questioned before us. Shorn of that challenge, it is doubtful whether the High Court would have passed the impugned orders. Be that as it may, what is to be noted is that the points which are raised for our consideration do not involve the validity of any law and are restricted to illegalities and irregularities alleged to have been committed by the Chief Electoral Officer, West Bengal, and by the officers subordinate to him in

regard to the preparation of the electoral rolls which would be used for the purposes of election to the West Bengal Legislative Assembly.

4. The Chief Electoral Officer, by a Circular dated March, 12, 1981, asked all the District Officers and the Sub-Divisional Officers under him to make a de novo intensive revision of the electoral rolls for the general election to the Legislative Assembly, West Bengal, without reference to the then existing electoral rolls. The grievance of the writ petitioners is that the guide-lines or instructions issued by the Chief Electoral Officer were not only not adhered to by the subordinate officers but were blatantly violated in certain cases. It is alleged, for example, that the exact extent of the polling areas was not demarcated clearly, no house-to-house visits were made and, the names of the members of each household who had attained the age of 21 years on the prescribed date were not recorded in several cases. According to them, the guide-lines issued by the Chief Electoral Officer for a de novo intensive revision of the electoral rolls are vague, unreasonable and arbitrary, as a result of which, it would not be possible to hold free and fair elections on the basis of those rolls.

5. By a Memorandum dated May 12, 1981, which we after the work of the intensive revision of the electoral rolls had begun, the Election Commission of India informed the Chief Electoral Officers of all the States and the Union Territories that its attention was drawn to certain irregularities in the matter of revision of electoral rolls and that in many cases, lists pertaining to certain polling booths were found to be defective. For example, the polling areas covered by the polling booths were not clearly demarcated, the polling booths were not compact, care was not taken to ensure that voters belonging to weaker sections or minority communities would be able to reach the polling booths and that the Commission's instructions that polling booths should be set up in colonies inhabited by Harijans and other weaker sections of the society, even though the number of voters may be less than 500, were not carried out appropriately. According to the petitioners, the instructions issued by the Election Commission were not carried out in the State of West Bengal. They also contend that the instructions issued by the Chief Election Commissioner in the Circular dated May 12, 1981 were at variance with the instructions issued by the Chief Electoral Officer, West Bengal on March 12, 1981, thereby making it difficult for the Electoral Officers to carry out their duly appointed duties. The petitioners have then referred in the writ petition to radiograms dated June 21 and July 4, 1981 issued by the Election Commission. It is contended that the directions issued in those radiograms are arbitrary and illegal for various reasons.

6. The further grievance made by the petitioners in the writ petition is that the preparation of electoral rolls on the basis of polling stations was made arbitrarily and improperly in that, the total number of voters in several constituencies, after the house-to-house enumeration, differed in material particulars from the total number of voters in the draft electoral roll which was published in the month of September 1981. It is alleged that the draft electoral rolls were manipulated by including therein not only Bangladesh nationals but minors, dead persons and refugees from Assam who were still living in refugee camps. According to the petitioners, these infirmities in the electoral rolls were of such a basic and inherent character that unless a further de novo revision of the electoral rolls was undertaken, it would be unfair to allow the elections to be held on the basis of the revised electoral rolls. The revision work of the electoral rolls which was undertaken in West Bengal could not possibly be finished within the time prescribed since, so the petitioners say, the State was passing through a difficult period, particularly in the matter of law and order and because of natural calamities. The infirmities in the revised electoral rolls which are pointed out by the petitioners may be summed up as the inclusion of tanners and aliens therein, exclusion of persons who are qualified to be enrolled as voters, the incorporation of fictitious entries and, mistakes and distortions in names and surnames. One of the grievances of the petitioners is that these manipulations in the electoral

rolls became possible because of the deliberate infiltration of the CPI(M) members of the Government staff in the election machinery. It is alleged that complaints relating to individual cases were sent to the Election Commission but, no attention was paid to them.

7. According to the petitioners, the scheme of the election law and the rules framed thereunder is so designed that unless all the objections are decided by the appellate authority and the Registration Officer and the electoral rolls are correspondingly amended, especially when a de novo revision of the electoral rolls is directed to be made, it is impermissible to issue a notification under Section 15(2) of the Act of 1951.

8. Yet another grievance of the petitioners is that nearly 8 lac complaints were filed in regard to the voters' lists but, no notice was issued to the concerned persons while deciding those complaints. In a few cases where notices were sent, not enough time was given to the complainants to appear before the concerned authorities to make their contentions. Indeed, the petitioners so contend, the claim of the Election Commission that it had already looked into most of the complaints was, on the face of it, exaggerated. Nearly 8 lac complaints are alleged to have been filed by the Indian National Congress by way of a sample survey which related to 100 out of 294 constituencies in the State of West Bengal.

9. The petitioners wind up the writ petition by asserting that the ban imposed by Article 329 of the Constitution cannot prevent them from filing the writ petition under Article 226 since, they were not challenging the "commencement of polling". Their challenge was to the constitutionality of the law relating to elections and the arbitrary actions on the part of the Election Commission. The writ petition contains exactly 100 grounds on the basis of which the holding of the impending elections to the West Bengal Legislative Assembly was challenged. The Election Commission had declared on February 9, 1982 in a press conference that the final voters' lists would be published on March 1, 1982 and that the elections may be held at any time between April and June 24, 1982.

10. We have set out the case of the petitioners at some length because their writ petition was withdrawn for disposal by this Court. The merits of the petition are being considered for the first time here, which makes it necessary to know the state of pleadings and the nature of the relief claimed in the petition.

11. By their writ petition, the petitioners ask for the following reliefs : (i) that the Chief Election Commissioner and the Chief Electoral Officer be restrained from acting, either by themselves or through their subordinates, in pursuance of the instructions or directions issued by them from time to time; (ii) that they should be restrained from scoring out any names from the electoral rolls which were finally published; (iii) that they should be restrained from issuing or publishing any notification under Section 15(2) of the Act of 1951 without preparing the electoral rolls de novo, after the disposal of the appeals against orders whereby claims and objections were decided; and (iv) that they should be restrained from holding elections to the West Bengal Legislative Assembly until the disposal of all the claims, objections and appeals under the Acts of 1950 and 1951.

12. On February 12, 1982, the learned Single Judge of the Calcutta High Court issued a rule on the writ petition and granted ad interim relief to the petitioners as prayed for by them. The writ petition was directed to be listed on February 19, 1982 when, after some arguments, the matter was adjourned to February 25. Some time later, four special leave petitions were filed in this Court against the ad interim orders passed by the learned Judge. On February 23, 1982 certain directions were issued special leave petitions by a Bench consisting of three of us, namely, D. A. Desai, J., A.

P. Sen, J. and Baharul Islam, J. It was directed that, since the High Court was seized of the writ petition and in view of the comity amongst judicial functionaries, it was better that the High Court completed the hearing by February 25, 1982. The order proceeded to say : "It is requested that the writ petition that the writ petition shall be placed on the Board of the learned Judge on Wednesday, February 24, 1982 and shall be heard and hearing completed and order pronounced before the expiry of Thursday, February 25, 1982. .... The learned Judge should proceed to hear the matter without considering any direction about production of the documents by the Election Commission or by any parties as that part of the order is stayed at the instance of Election Commission. The parties are precluded from making any requests for adjournment."

13. The writ petition was called out for hearing before the learned Judge on February 25, when he directed the respondents to the writ petition to take certain steps before the issuance of the notification under Section 15(2) of the Act of 1951. In effect, he confirmed the ad interim order passed on February 12, 1982.

14. We will deal with the legal contentions presently but, before doing so, we would like to demonstrate that the grievance made by the petitioners against the Election Commission, the Chief Electoral Officer and their subordinates is wholly imaginary and unjustified. We were taken through the counter-affidavits filed by Shri Narayanan Krishnamurthi, Chief Electoral Officer, West Bengal, and Shri K. Ganesan, Secretary to the Election Commission, in answer to the writ petition. The facts stated therein, which are beyond the pale of controversy, afford a complete answer to the petitioners' contentions. The following position emerges from the affidavit filed by the Chief Electoral Officer :

Steps taken with regards to the intensive de novo revision of electoral rolls in 1981 under Section 21 of the Representation of the People Act, 1950 read with Rule 25 of the Registration of Electors Rules, 1960 and Rules 4 to 23 of the said Rules

(1) The general elections to the Lok Sabha were held in early 1980. The electoral rolls in the State of West Bengal for all the 294 assembly constituencies were revised intensively in 1979, along with the revision of rolls in all other States and Union Territories, for the purpose of holding that election.

(2) After the said general election to the Lok Sabha, and the general elections to certain State Assemblies which were held in June 1980, the electoral rolls were revised summarily by way of special revision throughout the country, under the new scheme of preparation of electoral rolls polling station-wise, thereby making every part of the electoral roll compact for a well-defined polling area and making them as far as possible coterminous with the polling stations which then existed. After the said special revision of the electoral rolls, the same were finally published by December 31, 1980.

(3) As the general election to the Legislative Assemblies of the States of Haryana, Himachal Pradesh and West Bengal were due in 1982, the Election Commission of India directed that the rolls in the aforesaid three States for all the constituencies should be intensively revised with reference to the qualifying date, which was to be January 1, 1981.

(4) The Commission directed that the widest possible publicity should be given to the programme of revision of rolls through mass media and that a meeting with the

representatives of State units of recognised political parties should be held to apprise them of the revision schedule and to seek their active cooperation.

(5) The following programme, as modified later, was approved by the Election Commission for the intensive revision of electoral rolls in the State of West Bengal :

(a) For 274 assembly constituencies, house-to-house enumeration was to be completed by June 30, 1981 and for the rest of the 20 constituencies by August 31, 1981. Draft publication of printed electoral rolls for 274 assembly constituencies was to be made on September 7, 1981 and for the remaining 20 constituencies on October 22, 1981.

(b) The period for lodging claims and objections was fixed between September 7, 1981 and September 28, 1981 in respect of 274 assembly constituencies and between October 22, 1981 and November 12, 1981 in respect of the remaining 20 constituencies.

(c) Final publication of the electoral rolls after disposal of claims and objections was to be made on December 31, 1981.

(6) The Chief Electoral Officer, according to the instructions of the Election Commission, issued orders to the Electoral Registration Officers of 21 assembly constituencies in Calcutta where house-to-house enumeration was first taken up, that 2 copies of the electoral rolls as finally published should be supplied by December 31, 1980 to recognised political parties for the purpose of intensive revision. Similar directions were issued to the officers of the remaining constituencies for the supply of 2 copies of the electoral rolls, where the house-in-house enumeration was taken up later.

(7) Press releases and advertisements in all dailies of West Bengal were issued on the question of intensive revision of electoral rolls in respect of 21 constituencies in Calcutta, seeking cooperation from all citizens and political parties, with special reference to house-to-house enumeration. In June 1981, similar advertisements were issued in the dailies of West Bengal regarding the intensive revision of electoral rolls in the other constituencies.

(8) Communications were sent between January and July 1981 by the Chief Electoral Officer to all political parties regarding the intensive revision of electoral rolls in respect of the assembly constituencies in Calcutta, seeking their cooperation in the task of complete revision of the electoral rolls.

(9) After the Election Commission issued revised condensed instructions for the enumeration of electoral rolls in the State of West Bengal, the Chief Electoral Officer communicated those instructions to all the Electoral Registration Officers in the State, together with his own directions regarding the programme of enumeration, checking and supervision.

(10) On March 19, 1981 a press release was issued in all the dailies of West Bengal, giving the details of the programme of enumeration, of the publication of the rolls in draft, inviting claims for inclusion of names in the rolls and objections to the

inclusion of names, if any, and also inviting objections to the particulars in respect of entries in the draft roll so published. The press release explained the procedure for filling up the enumeration cards.

(11) In terms of the instructions issued by the Election Commission on May 13, 1981, corresponding detailed instructions were issued by the C.E.O. to the District Election Officers and Electoral Registration Officers regarding the preparation and finalisation of the list of polling stations.

(12) On June 29, 1981 the Presidents and Secretaries of all political parties were informed by a communication that a meeting will be held at the Writers' Building in Calcutta on July 8, 1981 at 11.00 a.m. in regard to the de novo intensive revision of electoral rolls with January 1, 1981 as the qualifying date and requesting them to make it convenient to attend.

(13) On July 7, 1981 a press release and press advertisement were issued in all dailies of West Bengal regarding the programme of revision of electoral rolls and the preparation and finalisation of the list of polling stations.

(14) On July 8, 1981 a meeting with political parties was held under the chairmanship of the C.E.O. in which, representatives of different political parties participated. In that meeting, the programme and procedure governing the remaining stages of intensive revision were explained to the participants. They were requested to bring to the notice of the concerned Electoral Registration Officers the complaints and defects, if any, regarding the enumeration work and the electoral rolls that were scheduled for publication in a draft form in September-October 1981.

(15) On July 8, 1981, letters were addressed to the political parties by the C.E.O. regarding the programme of intensive revision and finalisation of polling stations. In those letters, it was specifically stated that "as this is a very gigantic exercise involving intensive field work and spot enquiry and careful and laborious office work, your cooperation is solicited to make this operation a success".

(16) In September and October 1981, printed draft electoral rolls were published in the offices of the Electoral Registration Officers and In the polling areas of each constituency concerned for the convenience of the public so that they could inspect the rolls and file their claims and objections near their places of residence. Such draft electoral rolls were published on September 7, 1981 in respect of 274 assembly constituencies and on October 22, 1981 in respect of the remaining 20 assembly constituencies. The draft rolls were kept for public inspection for 21 days.

(17) On September 7, 1981 yet another press advertisement in all dailies of West Bengal was issued, not only reaffirming the draft publication of rolls regarding 274 assembly constituencies on September 7, 1981, but also indicating the procedure for filing claims and objections under the law.

(18) On October 9, 1981 a communication was sent by the C.E.O. to all the political parties regarding draft publication of the electoral roll of the remaining 20 constituencies on October 22, 1981 indicating again the procedure for filling claims

and objections.

(19) In early December 1981, Shri Ajit Kumar Panja of the Indian National Congress made a complaint regarding the non-inclusion and wrong inclusion of certain entries in the electoral roll of 158-Burtola Assembly Constituency. A special check was made and remedial action taken in respect of 6000 entries before the finalisation of the intensively revised rolls of December 31, 1981. The Electoral Registration Officer, who is the Collector of Calcutta, made a report in that behalf, a copy of which is annexed to the counter-affidavit of Shri Krishnamurthi.

(20) The final publication of intensively revised electoral rolls which were prepared de novo during 1981, after a house-to-house enumeration in all the 294 assembly constituencies, was made with printed supplements on December 31, 1981. This revision was made with reference to the qualifying date as January 1, 1981. With this, the process of intensive revision which was commenced on January 1, 1981 in the State of West Bengal was completed.

(21) The total number of claims received in the prescribed form No. 6, and those admitted, and the total number of objections filed in the prescribed form No. 7, and those allowed, were as follows :

#Total number of claims filed in prescribed form No. 6 ... 4,17,231 Total number of claims admitted ... 3,05,072 Total number of objections filed in prescribed form No. 7 ... 1,09,865 Total number of objection allowed ... 65,430##

Steps with regard to summary revision of the electoral rolls undertaken in 1982 under Section 21 of the Representation of the People Act, 1950 read with Rule 25 Rules 9 to 23 of the Registration of Electors Rules, 1960 so as to bring the Electoral Rolls up-to-date i.e. with reference to the qualifying date as January 1, 1982

(1) On December 9, 1981, the Election Commission directed the Chief Electoral Officers of all States and Union Territories (except Assam, Andhra Pradesh, Karnataka, Meghalaya, Nagaland and Tripura) to undertake summary revision of electoral rolls in 1982 with reference to January 1, 1982 as the qualifying date and chalked out a programme for the same.

(2) On December 14, 1981 the Commission wrote a letter to all political parties at their headquarters giving the details of the above programme for the summary revision of electoral rolls and soliciting their cooperation.

(3) A press release and an advertisement were issued in all the dailies of West Bengal on December 23, 1981 informing the public about the draft publication of the electoral rolls, in the course of summary revision of rolls in 1982. A copy of this release was also endorsed to all political parties on December 23, 1981.

(4) A circular letter was addressed to the General Secretaries and Presidents of all political parties in West Bengal by the C.E.O. giving details of the programme of summary revision of electoral rolls in 1982 and soliciting their cooperation. By this letter, political parties were also informed that 2 copies of the supplements to the draft electoral rolls, being intensively revised then and, due for publication on

December 31, 1981, would be supplied to each political party free of cost.

(5) The electoral rolls which were prepared de novo after house-to-house enumeration in 1981 and which were intensively revised in all the 294 assembly constituencies in the State were finally published with the supplements on December 31, 1981.

(6) On January 1, 1982 the finally published electoral rolls with the supplements were published in draft in the respective polling areas by all the Electoral Registration Officers for the purpose of summary revision undertaken in 1982. Claims and objections were specifically invited in the prescribed forms under the law.

(7) Due to the internal misunderstanding between Shri Ajit Kumar Panja and Shri Anand Gopal Mukherjee of the Indian National Congress, the authorities were unable for some little time to discover who, between those two, entitled to receive copies of the electoral rolls. The rolls were supplied after the position was clarified.

(8) On January 4, 1982 an advertisement was issued in all dailies of West Bengal informing the public as to the exact contents of Forms 6, 7 and 8 of the Registration of Electors Rules, 1960 and also intimating to them that no fees will be required to be paid for submitting claims or objections in those forms.

(9) The draft rolls were kept for public inspection in the respective polling areas and in the offices of the Electoral Registration Officers concerned. Claims and objections were asked to be presented either to the officer designated for the purpose under the law or to the Electoral Registration Officer concerned.

(10) The following table shows the position regarding the claims and objections made in the prescribed form and accepted :

# Claims in Objections in Objections to Form No. 6 Form No. 7 particulars in Form No. 8 Filed 3,34,993; 1,49,548; 89,300 Accepted 2,31,583; 80,592; 80,798##

15. These facts establish in an ample measure that the grievances made by the petitioners are unsupported by facts. It is significant that none of the petitioners has been denied a place in the electoral roll nor were the objections raised by anyone of them dismissed. As we have stated earlier, none of the four persons who forwarded the omnibus complaints even filed an affidavit in support of those complaints.

16. Holding the elections to Legislatures and holding them according to law are both matters of paramount importance. On the one hand is the individual's statutory right of franchise, on the other is the constitutional obligation imposed by Article 168 that "For every State there shall be a Legislature". We find it somewhat odd that, in the instant case, individuals whose rights are alleged to have been violated have not come to the Court at all. Not one out of the eight lacs. Persons who have come to the Court are members of a political party who claim to represent them. While we are on this question, it must be emphasized that election laws do not recognise political parties except in Rule 11 (c) of the Registration of Electors Rules, 1960, the Election Symbols (Reservation and Allotment) Order, 1968, and Explanation 1 to Section 77(1) of the Act of 1951. The right to be included in the electoral roll or to challenge the inclusion of any name in the roll is a right conferred

upon an individual and not upon any political party. The petitioners are espousing the cause of unnamed and undisclosed persons through a writ petition, which does not even claim to possess a representative capacity. The upshot of the petition filed by them is that some 3 crores of voters were being deprived of an opportunity to exercise their franchise in order that an investigation should be made as to whether the names of some 5 lacs and odd persons should be included in or excluded from the electoral roll.

17. The fundamental error from which the writ petition suffers is this : The fact that the revision of electoral rolls, either intensive or summary, is undertaken by the Election Commission does not have the effect of putting the electoral roll last published in cold storage. The revision of electoral rolls is a continuous process which has to go on, elections or no elections. For example, the revision of electoral rolls has to be undertaken under Section 21 of the Act of 1950, whether or not an election is impending. Sub-section (1) of Section 21 provides that the "electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act". Sub-section (2) of Section 21 provides for the revision of the electoral roll prepared under sub-section (1). The proviso, which is important, says that if the electoral roll "is not revised as aforesaid", the validity or continued operation of the 'said' electoral roll shall not be affected. The controversy whether the proviso governs clause (b) of Section 21(2) only or whether, it applies to clause (a) of that section also is futile, though it may be interesting from the point of view of a textbook writer on the "Interpretation of Statutes". The crux of the matter is that if an electoral roll is not revised, its validity and continued operation remain unaffected, at least in a class of cases. That exemplifies an important principle which applies in the case of electoral rolls.

18. Section 21(3) of the Act of 1950 confers upon the Election Commission the power to direct a special revision of the electoral roll. The proviso to that sub-section also says that until the completion of the special revision so directed, the electoral roll for the time being in force shall continue to be in force. That proves the point that election laws abhor a vacuum. Insofar as the electoral rolls are concerned, there is never a moment in the life of a political community when some electoral roll or the other is not in force.

19. Section 23(3) of the Act of 1950 also points in the same direction. Under that provision, no amendment, transposition or deletion of an entry can be made under Section 22 and no direction for the inclusion of a name in the electoral roll or a constituency can be given, after the last date for making nomination for an election in the particular constituency. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations. If that were not so, the easiest expedient which could be resorted to for the purpose of postponing an election to the Legislature would be to file complaints and objections, omnibus or otherwise, which would take days and months to decide. It is not suggested that claims and objections filed in the prescribed form should not be decided promptly and in accordance with law. But, the important point which must be borne in mind is that whether or not a revision of an electoral roll is undertaken and, if undertaken, whether or not it is completed, the electoral roll for the time being in force must hold the field. Elections cannot be postponed for the reason that certain claims and objections have still remained to be disposed of. Then, claimants and objectors could even evade the acceptance of notices and thereby postpone indefinitely the decision thereon. The holding of elections to the Legislatures, which is a constitutional mandate, cannot be made to depend upon the volition of interested parties.

20. According to sub-rule (3) of Rule 23 of the Registration of Electors Rules, 1960, the "presentation of an appeal under this rule shall not have the effect of staying or postponing any

action to be taken by the Registration Officer under Rule 22". Rule 22 imposes upon the Registration Officer the obligation to publish the electoral roll which, together with the list of amendments, becomes the electoral roll of the constituency. Thus, the fact that an appeal is pending under Rule 23(1) against the decision of a Registration Officer under Rule 20, 21 or 21-A does not constitute an impediment to the publication of the roll and to the roll, upon such publication, coming into force. Rule 20 provides for inquiry into claims and objections; Rule 21 provides for inclusion of names which are left out of the roll owing to inadvertence or error; while, Rule 21-A provides for the deletion of names of dead persons and of persons who cease to be, or are not, ordinary residents of the particular constituency. Notwithstanding the fact that the roll contains these errors and they have remained to be corrected, or that the appeals in respect thereof are still pending, the Registration Officer is under an obligation to publish the roll by virtue of Rule 22.

21. As a result of this discussion, it must follow that the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the Legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.

22. One of the question which was debated before us and to which we must now turn, is whether the directions given by the Election Commission to the Chief Electoral Officers have the force of law under the Acts of 1950 and 1951. There is no provision in either of these Acts which would justify the proposition that the directions given by the Election Commission have the force of law. Election laws are self-contained codes. One must look to them for indentifying the rights and obligations of the parties, whether they are private citizens or public officials. Therefore, in the absence of a provision to that effect, it would not be correct to equate with law, the directions given by the Election Commission to the Chief Electoral Officers. The Election Commission is, of course, entitled to act *ex debit justitiae*, in the sense that, it can take steps or direct that steps be taken over and above those which it is under an obligation to take under the law. It is, therefore, entitled to issue directions to the Chief Electoral Officers. Such directions are binding upon the latter but, their violation cannot create rights and obligations unknown to the election law. To take a simple example, if the Election Commission issues a directive to a Chief Electoral Officer to invite leaders of political parties for a meeting to consider their grievances pertaining to the electoral roll, the failure to hold such a meeting cannot be equated with the failure to comply with the provision of a law. Leaders of political parties who were asked to be invited by the Election Commission cannot challenge the process of election on the ground that the directive issued by the Election Commission was violated by the Chief Electoral Officer. The question is not whether the directions issued by the Election Commission have to be carried out by the Chief Electoral Officers and are binding upon them. The plain answer is that such directions ought to be carried out. The question is whether, the failure on the part of the Chief Electoral Officer to comply with the directions issued by the Election Commission furnishes any cause of action to any other person, like a voter or a candidate, to complain of it. We are of the opinion that the directions issued by the Election Commission, though binding upon the Chief Electoral Officers, cannot be treated as if they are law, the violation of which could result in the invalidation of the election, either generally, or specifically in the case of an individual. In the instant case, the Chief Electoral Officer carried out faithfully the directions issued by the Election Commission. But, even if he had not, he could not be accused of disobeying a law.

23. We have already adverted to the various steps taken by the Election Commission and the Chief Electoral Officer for removing the apprehensions of the petitioners and a few others. The following narration of events will complete that picture. The facts stated below appear in the counter-affidavit

of the Chief Electoral Officer, Shri N. Krishnamurthi.

Steps taken by the Chief Electoral Officer, in the exercise of his suo motu powers under Rules 21 and 21-A of the Registration of Electors Rules, 1960, with regard to inquiries into omnibus complaints

(1) In late December 1981 and early January 1982, Shri Bhola Nath Sen and Shri Ajit Kumar Panja of the Indian National Congress wrote letters to the Election Commission complaining of rigging of electoral rolls. Replies were sent to them specifically that, under the law, claims and objections were required to be lodged before the Electoral Registration Officers who were statutorily charged with the duty of deciding those claims and objections. They were further informed that if any Electoral Registration Officer failed to deal with those claims and objections in accordance with law, complaints could be lodged with the Election Commission and the C.E.O. in order to enable them to investigate into them. They were also assured that, in the mean time, the lists forwarded by them were being looked into. Similar replies were sent to other complainants.

(2) Shri Anand Gopal Mukherjee, President of the Pradesh Committee of the Indian National Congress, West Bengal, Shri Bhola Nath Sen, leader of the Legislature Party of the Indian National Congress, West Bengal, Shri Priya Ranjan Das Munshi, Shri Sougat Roy and Shri Pradip Bhattacharya met the Chief Election Commissioner and brought to his notice that the rolls in West Bengal had been manipulated to a large extent by inclusion of under-aged persons, dead persons and temporary residents. They were requested to examine the rolls as finally published on December 31, 1981. It is significant that none of these persons has filed any affidavit in the present proceedings in support of their complaint.

(3) In reply to a letter dated January 7, 1982 from Shri A. K. Sen, the Commission advised him also that the Electoral Registration Officers were constituted as authorities to prepare and bring the rolls up to date and, therefore, all claims and objections should be filed with them.

(4) On January 15, 1982 Shri A. K. Panja made several complaints to the Chief Election Commissioner and alleged, particularly, that the electoral machinery of the State was influenced by the Co-ordination Committee of CPI(M). It is noteworthy that none of the omnibus complaints made by Shri Panja bore the signature of any person, though the printed form contains a column for the signature of the complainant.

(5) The omnibus complaints made by Shri Panja and by Dr. Gopal Das Nag were referred to the concerned Electoral Registration Officers, even though they were not in the prescribed form. The District Election Officers submitted detailed reports to the C.E.O. controverting the allegations with the help of facts and figures.

(6) The authorised representatives of the Indian National Congress in the various constituencies were given copies of the intensively revised electoral rolls.

(7) Between January 22 and January 25, 1982 radiogram messages were sent by the

C.E.O. to the Electoral Registration Officers stating that they could use their suo motu powers even on the basis of unsigned complaints, if the complaints appeared to be genuine.

(8) On January 22, 1982 the Election Commission of India decided to send a team of its officers to West Bengal to look into the complaints regarding large scale errors and omissions in the electoral rolls. On January 27, the Commission's team of officers went to Calcutta for the purpose of making a sample survey of the work done in the matter of revision of electoral rolls.

(9) In order to facilitate a proper inquiry into the omnibus complaints, the date of official publication of the electoral roll was postponed with the approval of the Election Commission of India.

(10) Radiogram messages were sent on January 28 and 29, 1982 to the District Election Officers and the Electoral Registration Officers, explaining the procedure which they should adopt under Rules 21 and 21-A of the 1960 Rules, for correcting the electoral rolls.

(11) These messages were sent in pursuance of the specific request made by Shri Anand Gopal Mukherjee and Shri Abdul Sattar to the Secretary of the Election Commission on February 2, 1982. They had also asked that notices of hearing of cases under Rules 21 and 21-A of the 1960 Rules on the basis of the omnibus complaints should be served on the local representatives of the parties. Notices were delayed in certain cases, as in case of Shri A. K. Panja who had given his address at Calcutta, without mentioning the name and address of his local representative.

(12) The team of officers deputed by the Election Commission visited various places in Calcutta and conducted an on-the-spot verification of complaints on a selective basis. It examined documents, reports and the electoral rolls and it met various leaders of the Indian National Congress. On a careful inquiry, it found that the allegations made by them were not borne out by the facts.

(13) On the basis of the report submitted by the team of office deputed by the Election Commission, it was decided on February 9, 1982 that no case was made out for undertaking a further de novo revision of the electoral rolls, especially since the percentage of errors was far too small.

(14) The work of investigation into the omnibus complaints was intercepted as a result of the ad interim injunction granted by the Calcutta High Court on February 12, 1982. It was only after the orders passed by this Court on March 4, 1982 that further investigation into the omnibus complaints could be undertaken.

24. We need no greater proof than this of two things : one, that the Chief Electoral Officer, West Bengal, carried out the directions of the Election Commission as, indeed, he was bound to; and two, that there is no substance in the grievance of the petitioners in regard to the preparation or revision of the electoral roll.

25. It is unnecessary to refer to the counter-affidavit of Shri K. Ganesan, Secretary to the Election Commission of India since counsel for the petitioners, particularly Shri A. K. Sen, stated before us

that there was no complaint to make against the Election Commission.

26. The only question which remains outstanding is whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of Article 329 (b) of the Constitution. That article provides :

Bar to interference by courts in electoral matters. - Notwithstanding anything in this Constitution -

#(a) \* \* \* \*##

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

On the conclusion of arguments in this case, we had passed an order on March 30, 1982 by which we had indicated that we will pronounce upon the question above stated later in our judgment. In the light of the conclusion recorded by us that the petitioners have not made out any case for the grant of relief claimed by them, it is unnecessary for us to decide the question whether the expression 'election' which occurs in Article 329(b), comprehends the preparation and publication of electoral rolls. Besides, as indicated by us in the order dated March 30, 1982, the view which we took was that though the High Court was justified in entertaining the writ petition and issuing a rule therein since, the writ petition apparently contained a challenge to several provisions of election laws, it was not justified in passing any order which would have the effect of postponing the elections which were then imminent. Even assuming, therefore, that the preparation and publication of electoral rolls are not a part of the process of 'election' within the meaning of Article 329(b), we must reiterate our view that the High Court ought not to have passed the impugned interim orders, whereby it not only assumed control over the election process but, as a result of which, the election to the Legislative Assembly stood the risk of being postponed indefinitely. The order dated March 30, 1982 which we will presently reproduce, contains our reasons in support of this conclusion. Very often, the exercise of jurisdiction, especially the writ jurisdiction, involves questions of property rather than of power. The fact that the court has the power to do a certain thing does not mean that it must exercise that power regardless of the consequences. As observed by a Constitution Bench of this Court in *N. P. Ponnuswami v. Returning Officer, Namakkal Constituency* (1952 SCR 218, 234 : AIR 1952 SC 64 : 1 ELR 133) :

Having regard to the important functions which the Legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

27. On the question as to the connotation of the word 'election' in Article 329(b), we may point out three decisions of this Court, one of which is *N. P. Ponnuswami* (1952 SCR 218, 234 : AIR 1952 SC 64 : 1 ELR 133) : referred to above, the other two being *Rampakavi Rayappa Belagali v. B. D. Jatti* ((1970) 3 SCC 147, 150 : AIR 1971 SC 1348) and *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* ((1978) 2 SCR 272 : (1978) 1 SCC 405 : AIR 1978 SC 851). It was held

in Ponnuswami (1952 SCR 218, 234 : AIR 1952 SC 64 : 1 ELR 133) that word 'election' is used in Article 329(b) in the wide sense of covering the entire process culminating in the election of the candidate. Fazl Ali, J., who spoke for the Court in that case, has referred to a passage in Halsbury's Laws of England to the following effect : (SCR p. 227)

It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is "reasonably imminent". Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion.

In Rampakavi Rayappa Belagali ((1970) 3 SCC 147, 150 : AIR 1971 SC 1348) it was held that the scheme of the Act of 1950 and the amplitude of its provisions show that the entries made in an electoral roll of a constituency can only be challenged in accordance with the machinery provided by the Act and not in any other manner or before any other forum unless, some question of violation of the provisions of the Constitution is involved. In Mohinder Singh Gill ((1978) 2 SCR 272 : (1978) 1 SCC 405 : AIR 1978 SC 851), Krishna Iyer, J., speaking for the Constitution Bench, has considered at great length the scope and meaning of Article 329(b) of the Constitution. Describing that article as the "Great Wall of China", the learned Judge posed the question whether it is so impregnable that it cannot be bypassed even by Article 226. Observing that "every step from start to finish of the total process constitutes 'election', not merely the conclusion or culmination", the judgment concludes thus : (SCC p. 427, para 26)

The rainbow of operations, covered by the compendious expression 'election', thus commences from the initial notification and culminates in the declaration of the return of a candidate.

28. We have expressed the view that preparation and revision of electoral rolls is a continuous process, not connected with any particular election. It may be difficult, consistently with that view, to hold that preparation and revision of electoral rolls is a part of the 'election' within the meaning of Article 329(b). Perhaps, as stated in Halsbury in the passage extracted in Ponnuswami (1952 SCR 218, 234 : AIR 1952 SC 64 : 1 ELR 133) the facts of each individual case may have to be considered for determining the question whether any particular stage can be said to be a part of the election process in that case. In that event, it would be difficult to formulate a proposition which will apply to all cases alike.

29. The delay in pronouncing this judgment is to be regretted. A large number of factors have contributed to it but, no more about them.

30. The order dated March 30, 1982 passed us reads thus :

The transferred case and the appeals connected with it raise important questions which require a careful and dispassionate consideration. The hearing of these matters was concluded four days ago, on Friday, the 26th. Since the judgment will take some time to prepare, we propose, by this order, to state our conclusions on some of the points involved in the controversy :

(1) The High Court acted within its jurisdiction in entertaining the writ petition and in issuing a rule nisi upon it, since the petition questioned the vires of the laws of election. But, with respect, it was not justified in passing the interim orders dated

February 12 and 19, 1982 and in confirming those orders by its judgment dated February 25, 1982. Firstly, the High Court had no material before it to warrant the passing of those orders. The allegations in the writ petition are of a vague and general nature, on the basis of which no relief could be granted. 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. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution. India is an oasis of democracy, a fact of contemporary history which demands of the courts the use of wise statesmanship in the exercise of their extraordinary powers under the Constitution. The High Courts must observe a self imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of Article 329(b) of the Constitution. We will pronounce upon that question later in our judgment.

(2) We are unable to accept the argument advanced on behalf of the petitioners that the Election Commission, or the Chief Electoral Officer or the Electoral Registration Officers have in any manner acted in violation of the Constitution, the Representation of the People Acts of 1950 and 1951, or the Registration of Electors Rules, 1960. The Election Commission issued the various directives *ex debito justitiae*, as steps-in-aid of a fair election. They are being observed faithfully and honestly, and shall be so observed until the deadline mentioned in Section 23(3) of the Act of 1950. The manner in which the directives are being implemented cannot be regarded as unreasonable, in the circumstances of the case.

It takes years to build up public confidence in the functioning of constitutional institutions, and a single court hearing, perhaps, to sully their image by casting aspersions upon them. It is the duty of the courts to protect and preserve the integrity of all constitutional institutions, which are devised to foster democracy. And when the method of their functioning is questioned, which it is open to the citizen to do, courts must examine the allegations with more than ordinary care. The presumption, be it remembered, is always of the existence of *bona fides* in the discharge of constitutional and statutory functions. Until that presumption is displaced, it is not just or proper to act on preconceived notions and to prevent public authorities from discharging functions which are clothed upon them. We hope and trust that the charges levelled by the petitioners against the Election Commission, the Chief Electoral Officer and the Electoral Registration Officers will not generate a feeling in the minds of the public that the elections held hitherto in our country over the past

thirty years under the superintendence, direction and control of successive Election Commissions have been a pretense and a facade. The public ought not to carry any such impression and the voters must go to the ballot-box undeterred by the sense of frustration which the petitioners' charges are likely to create in their minds. We see no substance in the accusation that the voters' lists have been rigged by the election authorities with the help of enumerators belonging to any particular political party. Enumerators are mostly drawn from amongst teachers and Government servants and it is difficult to imagine that thirty-five years after independence, they are totally colour-blind. They are the same in every State and every constituency. The safeguard lies in the efficiency and impartiality of the higher officers who have to decide objections filed in relation to the voters' lists. That safeguard is not shown to have failed in the instant case.

(3) Surprisingly, though rightly, no argument was made before us on behalf of the petitioners on the question of the constitutional validity of any of the provisions of the Acts of 1950 and 1951 or the Rules. 'Surprisingly' because, the major part of the writ petition is devoted to the adumbration of a challenge to some of those provisions and yet no argument was urged before us in support of that challenge. 'Rightly', because, there is no substance whatsoever in that challenge and counsel exercised their judgment fairly and judiciously in refusing to waste the time of the Court in pursuing an untenable contention. Only one learned counsel, Shri Bhola Nath Sen, complained that the fee of ten paise prescribed by Rule 26 of the Rules of 1960 is unreasonable since, there are many voters who cannot afford to pay ten paise. The argument must be rejected out of hand as devoid of substance and as lacking in awareness of Indian Economics. There is no voter in our country who does not have or cannot raise a sum of ten paise to ventilate his objection to the voters' list. Counsel should not grudge at least that modest achievement to our successive Governments which have been fighting a relentless war against poverty. The reason for our mentioning that a large part of the writ petition is devoted to a statement of constitutional challenge to election laws, is, that it is upon a petition of this nature that the High Court's jurisdiction was invoked. The petition is dressed up in constitutional attire but, before us, no counsel tried even to have the feel of it, except Shri Bhola Nath Sen. We will have occasion to demonstrate how, in a petition of this nature, no interim relief was permissible, especially in terms of prayer clause (f), by which the entire election process was brought to a standstill.

For these reasons and those which we will give in our judgment later, we dismiss the writ petition filed in the Calcutta High Court which was transferred for disposal to this Court. All orders, including interim orders, passed by the Calcutta High Court are hereby set aside. Civil Appeals 739 to 742 of 1982 will stand disposed of in the light of the dismissal of the writ petition, out of which they arise. There will be no order as to costs.

31. Our learned Brother Baharul Islam, J. passed a separate order which reads thus :

I regret my inability to associate myself with some of the observations made by Lord, the Chief Justice, in para 2 of the order just pronounced. While I do not have any doubt in the integrity and impartiality of the Election Commission, I am not satisfied that all the Electoral Registration Officers concerned and all the staff working under them, were beyond reproach in their conduct in implementing the relevant provisions

of the Constitution, the Representation of People Acts of 1950 and 1951, the Electoral Registration Rules, 1960 and the directions given by Election Commission in the preparation of the electoral rolls. I, however, agree that the writ petition under Article 226 of the Constitution filed before the Calcutta High Court and transferred to this Court be dismissed and the stay orders granted by the High Court be vacated, for reasons to be given in my judgment to follow.

Mr. Nariman, learned counsel for the Election Commission told us at the time of hearing that the claims and objections already filed had been, and were being, looked into. It is hoped that claims and objections, if any outstanding yet, will be disposed of, and names included, in the electoral rolls till the last date of making nominations, as permissible under Section 23 (3) of the Representation of People Act, 1950.

32. We order accordingly.

BAHARUL ISLAM, J. (dissenting). -

The Constitution of India envisages a Sovereign, Socialist, Secular, Democratic Republic. Each of the terms 'Sovereign', 'Socialist', 'Secular', 'Democratic' and 'Republic' is significant and pregnant with meaning deeper than the apparent. Unless their true significance is properly realized, no provision of the Constitution or any other statute can be interpreted in its true perspective. Republic connotes the existence of a President. The Indian Constitution has provided for a democratically elected President. The Constitution also has provided for a form of Government by the people's representatives democratically elected on the basis of adult franchise irrespective of caste, creed, race or sex. The term 'Secular' has been incorporated in the Preamble by the Constitution (Forty-Second Amendment) Act, 1976 and is effective from January 3, 1977. The addition of one term 'Socialist' is not for mere ornamentation, put with a definite object. The term 'Socialist' has both an economic as well as a political content. The basic needs of a citizen of any civilized country with any form of Government are food, clothing, education and health services.

A citizen of any modern democratic State has also an additional need, which is a political right. It is the right of participation in the governance of the country directly or indirectly. This participation of an adult citizen of our country starts with the right to vote for a candidate and elect a representative of his choice to the Legislatures and other self-governing institutions. This right to vote presupposes a right to be enrolled as an elector provided, of course, he has the requisite qualifications prescribed by the Constitution and the election laws and other statutes and has none of the disqualifications enumerated in those laws.

34. Chapter XV of the Constitution provides for elections to the House of People and the Legislatures of the States. Article 326 of the Constitution provides for elections to the House of People or to the Legislative Assemblies of the States on the basis of adult suffrage : that is to say, every person who is a citizen of India and who is not less than 21 years of age on a particular date and is not otherwise disqualified under the Constitution or any law on the ground of non-residence and unsoundness of mind, crime, corrupt or illegal practice shall be entered into the register as voter for such election. The basis of election on adult franchise and the right to be registered as a voter at an election of a person with the requisite qualifications and having no disqualifications are constitutional mandates. By virtue of powers given under Article 327 of the Constitution, the Parliament has already made provisions, inter alia, for the purpose of the preparation of the electoral rolls and matters connected therewith in the Representation of People Act, 1950 (hereinafter

referred to as "the 1950 Act") and the Registration of Electors Rules, 1960 (hereinafter "the Electors Rules, 1960") and for the purpose of conduct of election to the Houses of Parliament and to the Houses of State Legislatures and to matters relating to such elections in the Representation of People Act, 1951 (hereinafter referred to as "the 1951 Act") and the Conduct of Election Rules, 1961 (hereinafter referred to as the "Election Rules, 1961").

35. Article 324(1) of the Constitution vests the superintendence, direction and control of the preparation of electoral rolls for the conduct of all elections to Parliament and to the Legislature of a State and of elections to the offices of President and Vice-President on the Election Commission, the constitution of which is provided for under Article 324(2). Clause (6) of Article 324 provides that the President or the Governor of a State shall, when so requested by the Election Commission, make available to the Election Commission such staff as may be necessary for the discharge of the functions conferred on the Election Commission under Clause I of Article 324. This shows that for the purpose of preparing the electoral rolls for the purpose of conducting elections, the Election Commission, although a very high and independent constitutional functionary, does not have a staff of its own appointed and removable by it. The staff made available to the Election Commission for the above purposes are the employees of a State or the Central Government. In other words, as the staff working for the preparation of the electoral rolls and the conduct of the elections are not the staff of the Elections Commission, they are not independent like the Election Commission, itself, but are liable to be influenced by the concerned Executive Government. This is an important thing to be remembered, and I shall have to refer to it later.

36. Article 325 of the Constitution provides that there shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of Legislature of a State and no person shall be ineligible for inclusion in any State electoral roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, caste, sex or any of them. In other words, so long as an adult citizen of India has requisite qualifications to be registered as an elector and has no disqualifications to be registered as such, he has a constitutional right to be registered as an elector. Illegal omission of the names of persons who were qualified from the electoral roll or inclusion of the names of persons who are not qualified or who have disqualifications has far reaching consequences. Let us take a hypothetical illustration. Suppose, in India or in a State of India, there are two political parties, A & B with near equal strength. Let us also suppose that party A is in power either at the Center or in the State or both and suppose party B is in opposition either in the Center or in the States or in both. Unless the electoral roll is prepared strictly in accordance with the provisions of the 1950 Act and the 1960 Rules, the electoral roll will have no sanctity, and the election conducted on such defective electoral roll will tilt the balance of power. On the other hand, if names of foreigners who are sure to support a particular party are included in the voters' list, or names of eligible persons who will not vote for a particular party and vote for another particular party are excluded, the result is obvious.

37. The basis of a free and fair election is the voters' list prepared in accordance with the 1950 Act and the 1960 Rules. If this is not so done, the electoral rolls will have no sanctity and the consequent election will also not inspire confidence in the people.

38. The next question is whether the objection to the inclusion of wrong names in the electoral names in the electoral rolls can be taken in an election petition under Section 100 of the 1951 Act. It cannot be. Mr. Nariman, counsel appearing for the Election Commission, submits that a qualified citizen has a right to be enrolled in the electoral roll, but he has no right to vote in a particular election. He is apparently - and only apparently-right. For Article 326 itself, says that can eligible

citizen "shall be entitled to be registered as a voter at are such election". But the enrollment of the name of a person in the electoral roll is absolutely meaningless unless he can also exercise his vote. If before the claims and objections of about eight lac voters, as alleged in this case are disposed of, the election be held, the result would be a farce and will not reflect the will of the people. It has been argued by Mr. Nariman that eight lac are voters of the State and the claims and objections in a particular constituency may be about a few thousands. Even in the counter-affidavit, filed on behalf of the Election Commission, it has been stated that the error may be 2 or 2 1/2 per cent. This percentage, though looks small, is very material in an election fought by multiplicity of political parties and independent candidates as is notoriously the case in India.

39. The statutory provisions dealing with the preparation of the electoral rolls for Assembly Constituencies are Part III of 1950 Act that deals with "Electoral Rolls for Assembly Constituencies" and Part II of 1960 Rules that provides for the preparation of the electoral rolls for Assembly Constituencies. Section 21 of the 1950 Act provides for the preparation and revision of electoral rolls. Sub-section (1) of this section provides that the electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act. Qualifying date has been defined under Section 14(b) of the 1950 Act as the "first day of January of the year in which it is so prepared or revised" "in relation to the preparation or revision of every electoral roll" under Part III. Section 15 provides that for every constituency there shall be an electoral roll which shall be prepared in accordance with the provisions of the Act. The preparation has to be made under the superintendence, direction and control of the Election Commission. Section 16 provides that a person who is not a citizen of India, a person of unsound mind, a person who is found to be guilty of corrupt practices and other offenses in connection with the elections shall not be registered as electors. Section 15 and 21 are mandatory. Sub-section (2) of Section 21 provides that the aforesaid electoral roll shall be revised in the prescribed manner with reference to the qualifying date (i) before the general election to the Legislative Assembly of a State or the House of the People and (ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency, unless otherwise directed by the Election Commission for reasons to be recorded in writing. In order words, revision before a general election or a bye-election roll is the rule and non-revision is the exception which is permissible only when the Election Commission directs for reasons to be recorded in writing. Clause (b) of sub-section (2) provides that the electoral roll shall be revised in any year in the prescribed manner by reference to the qualifying date it such revision has been directed by the Election Commission. In other words, the Election Commission may direct that an electoral roll be revised in any year although there may be no ensuing general or bye-election. There is a proviso added clause (b). It is in the following terms :

If the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

40. There is a controversy in the interpretation of the proviso. One argument is that this proviso governs both the clauses (a) and (b) of sub-section (2). The other argument is that the proviso controls only clause (b). In my opinion, the proviso controls clause (b) only and not clause (a); for, after the word 'shall', clause (a) starts with, - "unless otherwise directed by the Election Commission for reasons to be recorded in writing". In clause (b) also "that the revision shall be made in any year if such revision is directed by the Election Commission". In other words, either in the entire State or in a particular constituency of the State, if there is no general or bye-election during the period of five years, the electoral roll may not have to be revised but the existing roll will be a valid roll for other purposes. For example, if some elector wants to show for the purpose of election either to the

Council of States or for any other purpose, other than election in the constituency, the entry in the existing electoral roll will be proof enough for that purpose. But the unrevised electoral roll will not be valid for the purpose of holding a general or a bye-election. The reasons are obvious. For example, if an electoral roll is prepared before a particular general election to a Legislative Assembly but there has been no revision for one reason or the other, say, for four or five years, or for a longer period, no general election can be held on the basis of the electoral roll prepared earlier. The reasons again are obvious; for, during this period of four or five years or a longer period, a large number of young people have become adults. And a number of persons whose names were registered in the existing electoral rolls must have died or left the constituency. As the election has to be held on adult franchise under the mandate of the Constitution, those who were below 21 years before four or five years have now a constitutional right to be enrolled as voters. And if the names of the dead persons or the persons who have migrated from the constituency are not deleted, there is the possibility of bogus voting in the names of those persons. Therefore, it is not permissible in normal circumstances to hold a general or bye-election on an electoral roll unless it is revised as directed under sub-section (1) of Section 21. The above interpretation is consistent with the basic objective of election indicated above.

41. Section 22 of 1950 Act provides for the correction of entries in the electoral rolls. Section 23 is important. It deals with the inclusion of names in the electoral rolls. Sub-section (1) of Section 23 provides that any person whose name is not included in the electoral roll of a constituency may apply to the Electoral Registration Officer for the inclusion of his name in the roll. Sub-section (2) of Section 23 provides that the Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein subject to the proviso to Section 23(2). Sub-section (3) of Section 23 enjoins that after the last date for making nominations for an election in a particular constituency, no amendment, transposition or deletion of any entry is permissible. Section 24 provides for appeals against the orders of an Electoral Registration Officer under Section 22 or 23 to the Chief Electoral Officer in the prescribed manner.

42. Let us now turn to Part II of the Electors Rules, 1960. Rules 10 and 11 provide for the publication of the draft roll and further publicity of the roll and the notice in Form 5. Rule 12 provides for lodging claims and objections within a period of thirty days from the date of publication of the roll in draft under Rule 10 for inclusion or deletion of names. Rule 13 provides that the claims have to be preferred in Form 6; objections have to be preferred in Form 7 and objections to a particular or particulars in an entry have to be made in Form 8. There are other restrictions also in lodging claims and/or objections in Forms 6, 7 and 8. Rule 14 provides that every claim or objection shall be presented to the Registration Officer or any other officer designated by him in this behalf. Rule 15 provides that the officer mentioned in Rule 14 shall maintain in duplicate a list of claims in Form 9, a list of objections to the inclusion of names in Form 10 and a list of objections to particulars in Form 11 and keep exhibited one copy of each such lists on a notice board in his office. Rule 15 is mandatory. After complying with sub-rule (1) of Rule 15, the designated officer shall forward with his remarks, if any, the list of claims and objections in Forms 9, 10 and 11 to the appropriate Registration Officer. Under Rule 16, the Registration Officer also shall maintain in duplicate the three lists on Forms 9, 10 and 11, entering thereon the particulars of every claim or objection as and when it is received by him, whether directly under Rule 14 or on being forwarded to him under Rule 15; and keep exhibited one copy of each such lists on a notice board in his office. Rule 16 is also mandatory.

43. The Registration Officer, under Rule 17, has the power to reject any claim or objection which is not lodged within the prescribed time or in the prescribed form and manner. Under Rule 18, if the

Registration Officer is satisfied as to the validity of any claim or objection, he may allow it without further inquiry after the expiry of one week from the date on which it is entered in the list exhibited by him under clause (b) of Rule 16. There is, however, a restriction on the power of the Registration Officer under the proviso to Rule 18. That restriction is that if there be a demand for inquiry in writing to the Registration Officer by any person against the acceptance of claim or objection, such claim or objection shall not be allowed without further inquiry. Rule 19 provides that where a claim or objection is not allowed under Rule 17 or 18, the Registration Officer shall give notice of hearing of the claim and objection. Under sub-rule (2) of Rule 19 the notice mentioned in sub-rule (1) of Rule 19 may be given either personally or by registered post or by affixing it to the person's residence or last known residence within the constituency. Rule 20 gives power to the Registration Officer to hold a summary inquiry into the claim and objection under Rule 19. Under sub-rule (2) to Rule 20, the hearing of the claimant or the objector and the person objected to and any other person who, in the opinion of the Registration Officer, is likely to be of assistance to him, shall be entitled to appear and be heard. Sub-rule (3) to Rule 20 gives a discretion to the Registration Officer to require any claimant or objector or any person objected to appear in person before him, or require that the evidence tendered by any person shall be given on oath and administer an oath for the purpose.

44. A combined reading of Rules 18, 19 and 20 shows that they are based on the principle of natural justice keeping in view the right of an eligible voter to be included in the electoral roll and the right of any person to see that the names of persons nor so eligible, but wrongly included earlier, be deleted from the electoral roll. Rule 21 gives suo motu power to the Registration Officer to include names inadvertently omitted. Rule 21-A gives suo motu power to the Registration Officer to delete the names of dead electors or of persons who have ceased to be or are not ordinarily residents in the constituency. Rule 22 is very important. It gives power to the Registration Officer to prepare a list, after compliance of Rules 18, 20, 21 and 21-A and publish the roll together with the list of amendments by making a complete copy thereof available for inspection and displaying a notice in Form 16 at his office. Under sub-rule (2) of Rule 22, on such publication, the roll together with the list of amendments "shall be the electoral roll of the constituency". Under sub-rule (3), this roll shall be the "basic roll" for the constituency. Rule 23 provides for appeal from the decision of the Registration Officer under Rules 20, 21 or 21-A to an appropriate authority. These provisions disclose the importance to be given to the preparation of an electoral roll.

45. It is true, as submitted on behalf of the Election Commission, that a perfect electoral roll is not possible. But at the same time, it must be remembered that the name of any eligible voter should not be omitted or the name of any disqualified person should not be included in the electoral roll, in violation of any constitutional or statutory provisions. The error, when pointed out, has to be removed. It must also be remembered that a large section of the electorate of our country consists of illiterate people and not politically so conscious as to see that their names are in the electoral roll. Needless to say that ours is a democratic country with a parliamentary form of Government that is run on party basis. The parliamentary form of Government depends on political parties. A duty therefore is cast on the political parties to educate the electorate and take steps that the names of eligible persons are included in the electoral rolls and that names of ineligible persons are deleted. Erroneous inclusion or omission of the names of a few persons may not be of much consequence. But if a considerable number of the names of such persons are either wrongly included in, or excluded from, the electoral roll, it will be of great consequence to a particular party either in power or in the opposition. The Electoral Registration Officer, therefore, cannot be fastidious as to whether the claims and objections are strictly in prescribed forms. Even when there are omnibus objection by a political party or political parties, as in this case, filing claims and/or objections, such claims

and objections have to be inquired into and necessary action taken so that the correct opinion of the electorate may be reflected in the result of the election.

46. In the instant case, it must be said in fairness to the Election Commission, on receipt of omnibus complaints and objections on behalf of a large number of persons, the Elections Commission directed the Chief Electoral Registration Officer of West Bengal to inquire into these claims and objections and take appropriate action. But it does not appear or there is nothing on record to show that those claims and objections, albeit omnibus, may be sometimes not strictly in the prescribed forms, were disposed of by the Electoral Registration Officer after issue of notices as required by the rules. The affidavits filed on behalf of the Election Commission by Mr. Krishnamurthi, and Mr. Ganesan vaguely state that they were 'duly' disposed of.

47. In para 46 of the affidavit of Mr. N. Krishnamurthi, the Chief Electoral Officer of West Bengal, it has been, inter alia, stated, "Similarly, as regards the letter dated January 17, 1982 of Shri Bhola Nath Sen addressed to me regarding his complaints in respect of the Bhatar Assembly Constituency I say that all specific complaints contained in his letter have been duly looked into by the Electoral Registration Officer and I have also examined the same. I crave leave to refer to the reports in this regard at the time of hearing". It has not been stated that the complaints were inquired into after issue of notices as required by law.

48. In clause (z) of Part I of another affidavit filed by Mr. Krishnamurthi, it has been stated :

In early December 1981, Shri Ajit Panja, Leader of Indian National Congress, made a complaint regarding the non-inclusion and wrong inclusion of certain entries in the electoral roll 158 of Burtola Assembly Constituency. A special check was made and remedial action taken in respect of 6000 entries out of 89, 000 entries before the finalisation of the intensively revised rolls of December 31, 1981. A copy of the report of the Electoral Registration Officer who is the Collector of Calcutta is annexed as Annexure 19.

49. The second part on page 4 of Annexure 19 reads :

At the same of house-to-house enumeration, enumerators approached the heads of households and handed over to them their electoral cards under their signatures. At this time, the Supervisors also signed both the copies of the electoral cards. After the electoral cards were deposited in our office, the Supervisors made a test check of about 30 per cent of the electoral cards. Myself along with my Assistant E.R.Os. made a test check of about 10 per cent. On such test case, large number of voters were included in the draft roll. In particular, in Burtola Assembly Constituency, more than 6000 voters were included by the Assistant E.R. Os. at the time of their test check. A test check of about 5 or 10 per cent was conducted in respect of the decreases in number of voters in all the constituencies by special squads. In Burtola Assembly Constituency such test checks were conducted by Sr. A. Roy Chaudhury, Additional Treasury Officer and E.R.O ....

50. It has not been stated as to what happened to, and what remedial measures were taken in respect of, the other 83,000 entries. It has also been sated in this affidavit that in Form 6, (1) total number of claims received was 4,17,231; (2) total number of claims allowed was 3,05,072. It has also been explained as to what was done to the other claims of 1,12,159, or that these cases were rejected after

hearing, as required by law. It has also been stated in the affidavit that the total number of objections received in Form 7 was 1,09,865 and the total number of objections allowed was 65,430. It has not been explained as to what was done in respect of the difference of 44,435 objections or that these objections were rejected after hearing as enjoined by law. What was stated in para (o) at page 26-A of the affidavit is, "All the above claims and objections in Forms 6, 7 and 8 were to be 'duly dealt with and disposed of' by the Electoral Registration Officers by that date". But it has not been stated that they were disposed of as required by law. It must be said in fairness to Mr. Krishnamurthi that as Dr. Gopal Das Nag had intimated to him that he (Dr. Nag) had not been able to file his specific complaints with the concerned Electoral Registration Officers before January 16, 1982 which was the deadline date, and as these omnibus complaints had been given to him prior to January 16, 1985, "in order not to be too technical (though in law the complaints and objections had to be in the prescribed forms and had to be submitted to the respective Electoral Registration Officers within the prescribed time) by a radiogram I requested the concerned Electoral Registration Officers of 16 constituencies in respect of which the omnibus complaints were made by the complaints in question, to accept them and promptly inquiry into them and take remedial action under Rules 21 and 21-A of the 1960 Rules so that the inquiry could be completed with the utmost promptitude and to report back with respect to the remedial action taken". But there is nothing to show that his directions were in fact carried out by the Electoral Registration Officers in accordance with the relevant Rules.

51. It has been stated in clause (p) at page 38 of the affidavit that "pursuant to the various radiogram messages, the District Election Officers had taken the following action and were continuing to take the following actions :

(i) In respect of complaints in Forms 6, 7 and 8, they were being dealt with and disposed of;

(ii) In respect of the specific cases in omnibus complaints, they were being inquired into and treated as information for action under Rules 21 and 21-A of 1960 Rules after due investigations mostly with 100 per cent on the spot verification. Performs indicating the manner in which the omnibus complaints were accepted or rejected or disposed of were duly filed in after determination and forwarded to the Chief Electoral Officer".

52. With regard to the complaints that notices were not received by the claimants and objectors, it has been admitted that "due to postal delay, the intimation neither reached Shri Ajit Kumar Panja or his agent about the hearing. In fact, the law does not require any intimation to be given to any representative of political parties in connection with inquires under Rules 21 and 21-A except that reasonable opportunity should be given to the affected person whose name for deletion is included in the list under Rule 21-A of the 1960 Rules. The procedure set out on February 2, 1982 was only to facilitate an expeditious disposal of the complaint if found to be genuine".

53. Technically, Mr. Krishnamurthi is right that a political party is not entitled to, under the law, to receive any notice but in the background of the illiteracy and ignorance and lack of political consciousness of a large section of the electorate, it is but proper and in consonance with the spirit of the Constitution and the election laws that notices be given to the leaders of political parties who file complaints or omnibus complaints and claims and objections. It has also been stated in para (r) at page 41 of the affidavit that, "The team visited various places in Calcutta and in the districts of Hooghly, 24-Parganas, Midnapore and Malda for on-the-spot verification of complaints on selective

basis". There is nothing to show that these on-the-spot verifications were made with prior notice to the complaints/objectors and/or their representatives. Obviously, a through inquiry into the complaints/objections were not made "inasmuch as the percentage of errors with reference to the total electors was too low and below normal :, as pleaded on behalf of the Election Commission. But it must be remembered that the fate of political party is decided by small margin of votes in our country as the political forces have not yet fully crystallised and as there are too many political parties in our country, and the elections are multicornered.

54. There may be another reason for a Registration Officer for not strictly following the provisions of law in disposing the claims/objections inasmuch as "the proceedings under Rules 21 and 21-A of 1960 Rules are summary in nature having regard to the necessity of expeditious revision of electoral rolls within a time-bound programme", as contended on behalf of the Election Commission in their affidavits. It has also been asserted in para 27 at page 64 of the affidavit that in disposing of the claims and objections under Rules 21 and 21-A of 1960 Rules, "The Electoral Registration Officer is not required to communicate his decision to any person making claims and objections when taking decision under Rules 21 and 2-A of 1960 Rules as the proceedings under Rules 21 and 21-A are taken under his suo motu power".

55. The writ petition has been filed by eight writ petitioners of whom petitioner 1 is the General Secretary of the West Bengal State Muslim League and also member of the National Executive of the Indian Union Muslim League and a member of the existing West Bengal Legislative Assembly, No. 2 is a member of the politburo of the All-India Communist party, No. 3 is is the President of the All-India Christian Democratic Party, No. 4 is the Vice-President of the West Bengal Unit of the Janata Party and Executive Member of National Committee of Janata Party and ex-M.P., No. 5 is a member of the All-India Congress Committee (Socialist) and an ex-M.P., No. 6 is a sitting member of the existing West Bengal State Legislative Assembly and Secretary of the Congress Legislative party, West Bengal Assembly, No. 7 is a member of the Republican Party of India, and No. 8 is the Vice-President of All-India Forward Bloc Central Committee.

56. The petition contains 98 paragraphs of which paras 3 to 70 refer to the provisions of law, para 73 to the alleged anomalies in the voters' lists. Paras 86, 93 and 95 refer to the alleged illegal inclusion/omission of the names of about 8,00,000 voters. It has been stated in paragraph 72 that 14 constituencies were affected by cyclones and other calamities, about 1000 to 5000 teenagers were included in the voters' lists, a large number of aliens were included in the voters' lists, a large number of bona fide voters were excluded, fictitious entries were made and distorted names were recorded. It was also alleged that CPI(M) enumerators having allegiance to the party in power in West Bengal were appointed for the preparation of the voters' lists. The answer on behalf of the Election Commission is that the enumerators were teachers who are normally appointed as enumerators. In my opinion, no persons who are members of a political party or of an associated affiliated to a political party should be appointed to be enumerators of voters so that there may not be any foul play or rigging in the preparation of the electoral roll. Enumerators should be persons who are not affiliated either directly or indirectly to any political party, whether in power or not; for this purpose, it is desirable that only Government officers including teachers of Government schools and colleges may be appointed enumerators, and not of non-Government organizations or institutions, unless their rules debar their employees to be members of political parties.

57. It, therefore, cannot be said that in the revision of the electoral roll, all possible care as enjoined by the letter and spirit of the Constitution and the statutes was taken in this case.

58. Now about reliefs. In this case, however, reliefs prayed for, are not possible to be granted. It is not the petitioners' case that the electoral rolls in all the 294 constituencies in West Bengal have not been revised in accordance with law. They have made allegations only with respect of two constituencies namely, Burtola and Bhatar. Although there were no electoral rolls prepared in accordance with law for Burtola and Bhatar constituencies, the general election of the entire State cannot be held up, as electoral rolls are prepared and published constituency-wise. It is, therefore, not possible to hold up the election in respect of all the constituencies unless a case is made out that no election can be held in any of all the 294 constituencies. Secondly, no concrete names of persons have been mentioned in the writ petitions and so it is not possible to issue any writ of mandamus to the names of those persons, as the case may be, in or from the electoral rolls. Thirdly, the authorities actually responsible for inclusion or exclusion of names are the Electoral Registration Officers but they have not been made parties to the petition and so no writ of mandamus can be issued against them; and it is not possible to make them parties so late.

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