

(1970) 08 DEL CK 0011
In the Delhi High Court
Case No : Writ No. 812 of 1970

A.K. Gopalan

APPELLANT

Vs

The Election Commission of India and Another

RESPONDENT

Date of Decision : 21-08-1970

Acts Referred:

Citation : AIR 1971 Delhi 39

Hon'ble Judges : H.R. Khanna, C.J; Narain Andley, J; Jagjit Singh, J

Bench : Full Bench

Advocate : Salil Ganguli and Rath Dass, for the Appellant; Niren De, Attorney General and B.N. Kirpal, for the Respondent

Judgement

1. Shri A.K. Gopalan by means of this petition under Art. 226 of the Constitution of India has prayed for the issuance of a writ to quash the electoral rolls of 133 Assembly Constituencies of Kerala. Prayer has also been made for a direction to the respondents to carry out special revision of electoral rolls in accordance with law.

2. The petitioner is an elector of the Cannanore (2) Assembly Constituency in Kerala. He is a member of parliament and is the leader of the Communist Party of India (Marxist). The respondents in the petition are the Election Commission of India and the Chief Election Commissioner of India. The present petition was filed by the petitioner on July 29, 1970.

3. The Legislative Assembly of Kerala was dissolved by the Governor of the State on June 26, 1970. The electoral rolls of the Assembly Constituencies according to the petitioner, contained fictitious and wrong entries as a result of the manipulations of the then party in power in Kerala. The petitioner in that connection sent a memorandum to respondent No.2 on July 10, 1970. Thereafter, on July 22, 1970 the petitioner personally met respondent No.2 and submitted another memorandum complaining of the defects in the electoral rolls. A copy of the electoral rolls is stated to have been supplied to the political parties

in July , Those electoral rolls according to the petitioner, were draft electoral rolls and there was no proper publication of the said rolls. The respondents are further stated to have directed special revision of electoral rolls and the publication of the final rolls on August 8, 1970 (this date was subsequently altered to August 10, 1970). The petitioner has claimed that the special revision of the rolls was not in accordance with law.

4. The petition was admitted on July 30, 1970. The Court then declined to make an order staying publication of the final rolls of the Assembly Constituencies till the disposal of the writ petition.

5. The petition has been resisted by the respondents and the affidavit of Shri A.N. Sen, Secretary, Election Commission of India, has been filed in opposition to the petition. Shri S.P. Senvarma, Chief Election Commissioner of India has also filed his affidavit controverting the stand of the petitioner.

6. Preliminary objections have been taken on behalf of the respondents that the petitioner has no locus stand to file the petition and that the petition is not maintainable in view of the provisions of Art. 329(b) of the Constitution. According to the respondents, the impugned electoral rolls are not draft rolls but are rolls which were revised on 1st of January, 1970 as the qualifying date and were finally published on January 15, 1970. It has been denied that there was any manipulation in the preparation of those electoral rolls. No objection to those rolls is stated to have been raised by any individual or political party till July, 1970. Three bye-elections on the basis of those rolls took place in Kerala and percentage of voters, who cast their votes in two of the bye-elections, was as high as 83.3% and 83.8% and in one-bye-election 73.6%. The petitioner's party contested all the three bye-elections and was successful in one of those elections. As regards the special revision of the electoral rolls, it is stated, respondent No .2 made an order for the purpose as a gesture of courtesy to the petitioner and Shri Namboodiripad when they complained that there were defects in the electoral rolls. Another factor, which weighed with the respondent in this respect, was that individuals applying for the correction of the electoral rolls might not have to pay a fee of 50 paise for every such application. The allegation that the special revision of electoral rolls was not in accordance with law has been controverted.

7. During the pendency of the petition an application was filed on behalf of the respondents to the effect that as a result of special revision final electoral rolls had been published in respect of all the constituencies on August 10, 1970. As such, the impugned electoral rolls were stated to have been superseded by the electoral rolls published on August 10, 1970. The petition, it was added had become infructuous and as such should be dismissed.

8. Another affidavit of Shri P. Roy, Deputy Election Commissioner, has been filed at the time of the hearing of the petition to the effect that intimation has been received that the Governor of Kerala issued a notification calling upon all

Assembly Constituencies in the State to elect members and that August 24, 1970 has been fixed as the last date for the making of nominations. The poll has been fixed for September 17, 1970. In view of the above notification also the petition is stated to be not maintainable.

9. Before dealing with the respective contentions of the parties, it may be pertinent to refer to the relevant provisions of law. Article 324 of the Constitution provides that superintendence, direction and control of elections shall be vested in an Election Commission. According to Art. 325, no person shall be ineligible for inclusion in the electoral roll on grounds of religion, race, caste or sex. Adult suffrage has been made the basis of elections to the House of the People and to the Legislative Assemblies of States by Art. 326. Article 327 gives power to Parliament to make provisions with respect to elections to Legislatures. Similar power in respect of elections to State Legislatures has been given to the Legislatures of those States under Article 328. Article 329 creates a bar to interference by courts in electoral matters. Clause (b) of that Article provides that notwithstanding anything in the Constitution no election to either House of Parliament or State Legislature shall be called in question except by an election petition. Two Acts, both of them known as the Representation of the people Act, have been enacted by the Parliament in respect of elections to the Houses of Parliament and the State Legislatures. One of these Acts is Act 43 of 1950 (hereinafter referred to as the Act of 1950). This Act deals with the allocation of seats in, and the delimitation of constituencies for the purpose of elections to the House of the People and the State Legislatures, the qualifications of voters at such elections, the preparation of the electoral rolls, the manner of filling seats in the Council of States by representatives of Union territories and other connected matters. The other Act, which is Act 43 of 1951 (hereinafter referred to as the Act of 1951) provides for the conduct of elections to the Houses of Parliament and the State Legislatures, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

10. According to Section 15 of Act of 1951, a general election shall be held for the purpose of Constituting a new Legislative Assembly on the expiration of the duration of the existing Assembly or on its dissolution. For the said purpose the Governor or the Administrator as the case may be shall, by one or more notifications published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon all Assembly constituencies to elect members in accordance with the provisions of the Act and the rules and orders made there under. Part Iii of Act of 1951 deals with election to the Assembly constituencies. According to Section 14 of that Act "qualifying date", in relation to the preparation or revision of every electoral roll, means the 1st day of January of the year in which it is so prepared or revised. Section 15 makes provision for electoral roll of every constituency. Section 16 prescribes the disqualifications for registration in an electoral roll. According to Section 17 no

person should be registered in more than one constituency, while according to Section 18 no person shall be registered more than once in any constituency. Section 19 prescribes that every person, who is not less than twenty-one years of age on the qualifying date and is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency. Section 20 gives the meaning of the word "ordinarily resident". Section 21 deals with the preparation and revision of electoral rolls and reads as under:

"(1) 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.

(2) The said electoral roll-

(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date-

(i) before each general election to the House of the People or to the Legislative Assembly of a State: and

(ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency: and

(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:

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

(3) Notwithstanding anything contained in sub-section (2) the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit

Provided that subject to the other provisions of this Act, the electoral roll for the constituency as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed."

Section 22 gives power to the electoral registration officer to make correction of entries in the electoral rolls on the application of a party or suo motu, while Section 23 gives power to that officer to include a name in the electoral roll, if the conditions mentioned in those sections are fulfilled. Section 24 provides for appeal to the chief electoral officer from any order of the electoral registration officer made u/s 22 or Section 23 of the Act. Section 25 provides for the fee on applications u/s 22 and 23 of the Act. Section 28 gives power to the Central Government to make rules after consultation with the Election Commission in respect of a number of matters including the following:

"(b) the preliminary publication of electoral rolls;

(c) the manner in which and the time within which claims and objections as to entries in electoral rolls may be preferred;

(d) * * * * * (e) the manner in which notices of claims or objections shall be published;

(f) the place date and time at which claims or objections shall be heard and the manner in which claims or objections shall be heard and disposed of;

(g) the final publication of electoral rolls;

(h) the revision and correction of electoral rolls and inclusion of names therein".

Sub-section (3) of S 28 provides that the rules shall be laid down before either House of Parliament for a period of thirty days and shall take effect there-after unless modified or annulled by the Parliament.

11. Registration of Electors Rules, 1960 (hereinafter referred to as the Rules), have been framed under Act of 1950. Rule 5 deals with the preparation of rolls in parts while Rule 6 deals with the order of names of electors in each part of the roll. Rule 8 enables the registration officer to secure information from the occupants of dwelling houses for the purpose of preparing the roll. According to Rule 9, the registration officer and persons employed by him shall have access to the registers of births and deaths, and to the admission registers of educational institutions. Rule 10 makes provision for the publication of the rolls in draft, while Rule 11 prescribes for further publicity to those rolls. Provision has also been made for the supply free of cost of two copies of each separate part of such roll to every political party for which a symbol has been exclusively reserved in the State According to Rule 12, every claim for the inclusion of a name in the rolls and every objection to an entry therein shall be lodged within a period of thirty days from the date of the publication of the roll in draft under Rule 10 or such shorter period as may be fixed by the Election Commission in that behalf. Power has also been given to the Election Commission to extend the period in respect of the constituency as a whole or part thereof. Rule 13 prescribes the form for claims and objections, while Rule 14 deals with the manner of lodging claims and objections. Rules 15 and 16 prescribe the procedure for designated officer and registration officer respectively. According to Rule 17, any claim or objection which is not lodged within the prescribed period, or in the form and manner specified shall be rejected. Rule 18 provides for the acceptance of claims and objections without inquiry, while Rule 19 deals with the notice of hearing claims and objections . Rule 20 prescribes the procedure for inquiry into claims and objections. Rule 21 deals with the inclusion of names inadvertently omitted, while Rule 21-A deals with deletion of names of dead electors and of persons who have ceased to be ordinarily resident. Rule 22 prescribes for the final publication of rolls, and reads as under:-

"(1) The registration officer shall thereafter

(a) Prepare a list of amendments to carry out his decisions under rules 18, 20,

21 and 21A, and to correct any clerical or printing errors or other inaccuracies subsequently discovered in the roll; and

(b) Publish the roll, together with the list of amendments, by making an complete copy thereof available for inspection and displaying a notice in form 16 at his office.

(2) On such publication, the roll together with the list of amendments shall be the electoral roll of the constituency.

(3) Where the roll (hereafter in this sub-rule referred to as the basic roll), together with the list of amendments becomes the electoral roll for a constituency, under sub-rule (2), the Registration Officer may for the convenience of all concerned, integrate, subject to any general or special directions issued by the Election Commission in this behalf the list into the basic roll by including the names of electors in the list together with all particulars relating to such electors in the relevant parts of the basic roll itself so however that no change shall be made in the process of such integration in the name of any elector or in any particulars relating to any elector as given in the list of amendments".

Rule 23 deals with the appeals from orders deciding claims and objections. Rule 25 deals with the annual revision of rolls. Sub-rules (1) to (3) of that rule read as under;

"(1) The roll for every constituency shall be revised under sub-section (2) of section 21 either intensively or summarily, or partly intensively and partly summarily, as the Election Commission may direct.

(2) Where the roll or any part thereof is to be revised intensively in any year, it shall be prepared afresh and Rules 4 to 23 shall apply in relation to such revision as they apply in relation to the first preparation of a roll.

(3) When the roll or any part thereof is to be revised summarily in any year, the registration officer shall cause to be prepared a list of amendments to the relevant parts of the roll on the basis of such information as may be readily available and publish the roll together with the list of amendments in draft; and the provisions of Rules 9 to 23 shall apply in relation to such revision as they apply in relation to the first preparation of a roll".

12. The date of the publication of the impugned electoral rolls was not specifically mentioned in the petition. At the time of the hearing of the petition Mr. Ganguli, on behalf of the petitioner, has stated that the electoral rolls, which are assailed by the petitioner are those which were published on January 15, 1970.

13. The first contention, which has been advanced on behalf of the petitioner, is that the impugned rolls which were published on January 15, 1970, were draft rolls and not rolls which are finally published u/s 21 of Act of 1950 and Rule 22.

After hearing Mr. Ganguli on behalf of the petitioner and the Attorney General on behalf of the respondents. We are of the opinion that there is no force in the above contention. The affidavit of Shri. A. N. Sen, Secretary of the Election Commission, shows that steps for the revision of the electoral rolls of 133 Assembly Constituencies in Kerala were taken under a crash programme during the period between November 15, 1969 and January 15, 1970. The programme covered all the States and the Union territories. The rolls were revised with the 1st of January, 1970 as the "qualifying date" and were finally published on January 15, 1970. The programme for the revision of the electoral rolls of the 133 Assembly constituencies was fixed by the Commission in its letter dated November 6, 1969 to the Chief Electoral Officers and was as follows:-

"(i) Publication of the existing rolls as draft rolls 15-11-1969 (ii) Period of lodging claims and objections 15-11-1969 to 30-11-1969 (iii) Preparation of Statements under Rr. 21 and 21-A by house to house enumeration 15-11-1969 to 7-12-1969 (iv) Publication of the lists under Rr. 21 and 21-A 7-12-1969 to 15-12-1969 (v) Disposal of claims and objections and statements under Rr. 21 and 21-A 31-12-1969 (vi) Preparation of supplements either in print or in manuscript 1-1-1970 to 15-1-1970 (vii) Final publication of the electoral rolls 15-1-1970

14. The affidavit further shows that in connection with the above-mentioned revision, the co-operation of all the political parties was sought by the respondents and a letter dated November 6, 1969 was issued in this connection to all political parties, including the Communist Party of India (Marxist). Wide publicity to the revision programme was also given. In pursuance of the above letter the electoral rolls that were in force on November 15, 1969 were published on that date in draft and claims and objections to those rolls were invited. A period of fifteen days, i.e., up to November 30, 1969 was prescribed for lodging claims and objections. The published rolls in draft were made available for inspection at all specified places accessible to the public. Two copies of the draft rolls were offered to the recognised political parties and they were asked to collect them from the respective electoral registration officers. Revision was thereafter carried out to the electoral rolls. The revision was partly summary and partly intensive. The rolls were after that finally published on January 15, 1970. These rolls were available for inspection by all concerned. There appears to be no cogent ground to question the above statement of Shri. Sen. The statement proves beyond any manner of doubt that the impugned rolls were not the draft rolls but were those which were finally published.

14. Another contention, which has been advanced on behalf of the petitioner, is that when part of the rolls was revised summarily during the period from November 15, 1969 to January 15, 1970, the registration officers failed to comply with the provisions of sub-rule (3) of Rule 25 of the Rules According to that sub-rule, when the roll or any part thereof is to be revised summarily in any year, the registration officer shall cause to be prepared a list of amendments to

the relevant parts of the roll on the basis of such information as may be readily available and publish the roll together with the list of amendments in draft. It is urged that no list of amendments referred to in the sub rule was published along with the existing rolls when they were published on November 15, 1969. It is evident that the above argument presupposes that some information was readily available and on the basis of such information the list of amendments, referred to in the sub-rule, was prepared. There is, however, no allegation in the petition, farless any material on the record, to show the availability of such information and the preparation of a list of amendments. Indeed the case of the petitioner, as given in the writ petition, is founded upon the assumption that the impugned rolls were draft rolls and not those finally published on January 15, 1970. As the above argument on behalf of the petitioner is based upon the existence of certain facts it was imperative for the petitioner to allege those facts so that the replay of the respondents could be obtained about the existence of those facts. The Court in such an event could have been in a position to decide the correctness and validity of the argument regarding infraction of Rule 25 (3). In the absence of such an allegation it cannot be held that the respondents failed to comply with sub-rule (3) of Rule 25 because of the alleged failure to publish the list of amendments.

15. It has next been argued on behalf of the petitioner that the qualifying date when the rolls were revised during the period from November 15, 1969 to January 15, 1970, should have been 1st of January, 1969 and not 1st of January 1970. According to Section 14(b) of Act of 1950, unless the context otherwise requires, the "qualifying date", in relation to the preparation or revision of every electoral roll under this Part, means the 1st day of January of the year in which it is so prepared or revised. As the entire process of preparation and revision of the rolls covered a period of two months, which was partly in the year 1969 and partly in the year 1970, question arises as to which is the year in which the rolls can be said to be prepared or revised. according to Mr. Ganguli, it should be the date of the commencement of the process of preparation or revision and not the date on which the process is completed. As against that, the Attorney General has argued that it should be the date on which the process is completed. After giving the matter our consideration, we are of the view that the stand of the learned Attorney general is correct. the electoral rolls can be considered to be prepared or revised only when the entire process of preparation or revision is completed. till that stage the process remains inchoate and in an inceptive state. It is the culmination of the process which results in the preparation and revision of the electoral rolls. We are fortified in the above conclusion by comparing the language of Section 14(b) of act of 1950 with that of sub-section (6) of section 27 of that act. Section 27 deals with the preparation of electoral rolls for Council constituencies. Sub-section (6) of that section reads as under:-

"For the purposes of sub-sections (4) and (5) the qualifying date shall be the 1st day of November of the year in which the preparation or revision of the electoral roll is commenced."

Had it been the intention of the Legislature that the qualifying date in section 14(b) should be the 1st January of the year in which the preparation or revision of the electoral roll is commenced, there was nothing to prevent the Legislature to use language similar to that used in sub-section (6) of S. 27 in Section 14(b) of the Act. The difference in the language of the above two provisions clearly indicates that the Legislature did not intend the 1st January of the year, in which the preparation or revision of the electoral rolls is commenced, to be the qualifying date for Section 14(b) of the Act. There is nothing in forms 4 and 6 appended to the Rules, to which reference has been made on behalf of the petitioner, which militates against the above conclusion.

16. Mr. Ganguli, on behalf of the petitioner, has next assailed the special revision of the rolls which was ordered on July 28, 1970. It is urged that the order dated July 28, 1970 mentioned the date of publication of the draft rolls to be August 3, 1970, while, according to the application filed by the respondents, the rolls with the list of amendments in draft in respect of the five districts, namely, Trivandrum, Quilon, Allepy, Kottayam and Ernakulam, were published on August 3, 1970, and in respect of the remaining districts, namely, Cananore, Kozhikode, Mallapuram, Palghat and Trichur, on August 6, 1970. It is argued that the publication of the draft rolls on August 6, 1970 was in violation of the order dated July 28, 1970. No such ground was taken by the petitioner in the petition and in the absence of that record is lacking material on the basis of which it can be predicated as to whether there was non-compliance with the order dated July 28, 1970. Annexure Vii to the petition is only a specimen of that order. There is nothing to show that the order, which related to the five districts of Cannanore, Kozhikode, Mallapuram, Palghat and Trichur, contained the date August 3, 1970 and not August 6, 1970 for the publication of the draft rolls. In fact the learned Attorney General has stated at the hearing that the date of publication for the draft rolls of the above-mentioned five districts was fixed as August 6, 1970.

17. Lastly it has been pointed out on behalf of the petitioner that the order dated July 28, 1970 contemplated that the claims and objections would be lodged within three days from the date of the publication of the roll in draft. It is urged that as the draft rolls were published in respect of five of the districts on August 6, 1970, the claims and objections could be lodged till August 9, 1970. 9th of August, 1970 was a Sunday and as such it was permissible under the General Clauses Act, 1897 (10 of 1897) which has been made specifically applicable by sub-rule (2) of Rule 2 of the Rules, to lodge claims and objections on August 10, 1970. In such an event, according to the learned counsel for the petitioner, there could not be the final publication of the rolls on August 10, 1970. So far as this contention is concerned, we find that there is no material on the record to show that any prejudice was caused to anyone because of the above directions of the respondents or that the same prevented any claim or objection being lodged. There was nothing inherently impracticable in the direction of the Commission that the claims and objections should be decided before the close of the day on August 10, 1970 and that the rolls be also finally published thereafter on that

day. according to sub-section (3) of S. 21 of the electoral roll for any constituency should take place in such manner as the Election Commission directs. it would, Therefore, follow that it was for the Election Commission to prescribe the procedure for the special revision and that the said Commission was well within its power in directing that the special revision be completed by August 10, 1970 and the final rolls be published on that day. It has to be borne in mind that the electoral process requires a measure of urgency and promptness and admits of no slackness or laxity. All that has to be ensured is that the urgency and promptness do not degenerate into undue hurry and impatient haste as may cause prejudice to the holding of free and fair elections and prevent persons, otherwise qualified, from exercising their franchise. A judicious balance has, Therefore, to be maintained keeping the said factors in view. The procedure adopted by the respondents has not been shown to impinge upon the above wholesome principle.

18. We, Therefore, find that none of the grounds attacking the legality and validity of the electoral rolls has been substantiated. as the contention advanced on behalf of the petitioner have been examined on their merits and have been found to be not well founded, it is not necessary to go into the objections raised on behalf of the respondents regarding the locus standi of the petitioner and the maintainability of the petition or about its having become infructuous.

19. The petition consequently fails and is dismissed but in the circumstances without costs.

20. Petition dismissed.