

(2016) 01 SC CK 0002

In the Supreme Court Of India

Case No : C.A. No. 178 of 2016 (Arising out of SLP(C) No. 8017 of 2008)

Election Commission of India

APPELLANT

Vs

Praful and Others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Registration of Electors Rules, 1960 — Rule 10, Rule 11, Rule 12, Rule 13, Rule 13(1), Rule 13(2), Rule 14, Rule 15, Rule 16, Rule 17, Rule 18, Rule 19, Rule 20, Rule 21, Rule 22, Rule 23, Rule 24, Rule 25, Rule 26, Rule 27, Rule 31, Rule 31(1), Rule 31(3), Rule 31(4), Rule 31(4A)
Representation of the People Act, 1950 — Section 21, Section 21(1), Section 21(2), Section 22;

Citation : (2016) 2 LawHeraldSC 1036 : (2016) 2 RCRCivil 152 : (2016) 2 RecentApexJudgments(RAJ) 22 : (2016) 1 Scale 520 : (2016) 12 SCC 738

Hon'ble Judges : Ranjan Gogoi and Prafulla C. Pant, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted. The challenge in this appeal is against an order dated 20.12.2007 of the High Court of Judicature at Bombay Bench at Aurangabad passed in Writ Petition No. 6084 of 2007, by which Clause 5(f) of a notice dated 01.10.2007 issued Under Rule 31(1) of the Registration of Electors Rules, 1960 has been struck down as being without any legal authority or sanction.

2. On the contentions advanced, the short question that would arise for consideration of the Court is whether in matters of revision of the electoral roll for graduates"/teachers" constituencies for election to the legislative council of the State of Maharashtra a fresh roll is to be prepared or the existing roll is to be revised and published after inviting claims and objections.

3. The relevant statutory provisions in this regard which will require to be noticed are Sections 21 and 22 of the Representation of the People Act, 1950 (for short, "the 1950 Act") and Rule 31 of the Registration of Electors Rules, 1960 (for short, "the 1960 Rules"). The said provisions, therefore, are extracted below:--

Section 21. Preparation and revision of electoral rolls.-(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. Correction of entries in electoral rolls.-If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency:--

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry [after proper verification of facts in such manner as may be prescribed]:

Provided that before taking any action on any ground Under Clause (a) or Clause (b) or any action Under Clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him. [after proper verification of facts in such manner as may be prescribed]

Rule 31: Rolls for graduates" and teachers" constituencies.--(1) The roll for every graduates" or teachers" constituency shall be prepared in such form, manner and language or languages as the Election Commission may direct.

(2) The roll shall be divided into convenient parts which shall be numbered consecutively.

(3) For the purpose of preparing the roll the registration officers shall, on or before the 1st [October], issue a public notice calling upon every person entitled to be registered in that roll to send to, or deliver at his office before the 7th day of [November] next following an application in Form 18 or Form 19, as the case may be, for inclusion of his name:

[Provided that for the purpose of preparing the roll for the first time for the Legislative Council of the State of Madhya Pradesh, the references to the 1st October and the 7th day of November shall be construed as references to the 31st December, 1966 and the 7th day of February, 1967, respectively.]

(4) The said notice shall be published in two newspapers having circulation in the constituency and republished in them once on or about the 15th [October] and again on or about the 25th [October]:

[Provided that in relation to the preparation of the roll for the first time for the Legislative Council of the State of Madhya Pradesh, the references to the 15th October and the 25th October shall be construed as references to the 15th January and 25th January, 1967, respectively.]

(4A) The provisions of Sub-rule (3) and Sub-rule (4) shall apply in relation to revision of the roll for every graduates" or teachers" constituency Under Sub-section (2)(a)(ii) of Section 21 of the Act as they apply in relation to the preparation of such roll subject to the modification that references to the 1st October and the 7th day of November in Sub-rule (3) and references to the 15th October and 25th October in Sub-rule (4) shall be construed respectively as references to such dates, as may be specified by the Election Commission in relation to each such revision.]

(5) The provisions of Rules 10 to 27 except Clause (c) of Sub-rule (1) and Clause (c) of Sub-rule (2) of Rule 13 shall apply in relation to graduates" and teachers" constituencies as they apply in relation to assembly constituencies: Provided that a claim or an application for the inclusion of a name shall be made in Form 18 or Form 19 as may be appropriate.

4. Section 21(1) of the 1950 Act contemplates the preparation of a fresh electoral roll whereas Sub-Section (2) deals with revision of such a roll which revision is to be made in accordance with the procedure prescribed.
5. Section 22 inter alia contemplates that deletion of the name of an existing voter from the electoral roll can be made only after giving the effected person an opportunity of being heard.
6. Rule 31(3) of the 1960 Rules contemplate filing of an application in Form 18 (Graduates) or Form 19 (Teachers) for registration in the electoral roll of a graduates" or teachers" constituencies as the case may be. Under Sub-rule (4A) of Rule 31 of 1960 Rules, at the time of revision of the rolls it is the procedure prescribed by Sub-rule (3) and (4) of Rule 31 which will have to be followed.
7. On a plain reading of the provisions of Sections 21 and 22 of the 1950 Act and Rule 31 of the 1960 Rules, what appears is a clear legislative intent to the effect that at the time of revision of the electoral roll for graduates" and teachers" constituencies every six years, the process involved would be one of preparation of a fresh electoral roll.
8. Learned Counsel for the Respondent-writ Petitioner who seeks to sustain the benefit of the High Court order has vehemently contended that the meaning that is sought to be attributed to the relevant provisions of the statue by the Appellant would be contrary to Section 22 of the 1950 Act and in fact the said provision of the 1950 Act would be rendered wholly nugatory.
9. It is further contended that the process of revision is required to be based on the existing roll with suitable additions and deletions there from. On the said basis it is contended that the view taken by the High Court with regard to the validity of Clause 5(f) of the notice, as mentioned above, is perfectly justified and would not call for any interference.
10. On due consideration, we find it difficult to accept the contention advanced on behalf of the Respondent-writ Petitioner. Section 21 of the 1950 Act requires revision of any electoral roll to be made in accordance with procedure prescribed. The procedure prescribed for graduates"/teachers" constituencies is embodied in Rule 31 of 1960 Rules. Sub-rule (4A) which deals with revision of the electoral rolls of graduates"/teachers" constituencies explicitly states that it is the procedure prescribed Under Sub-rules (3) and (4) of Rule 31, which deals with fresh preparation of the electoral roll for such constituencies, that will also apply in the matter of revision of the electoral roll. The reason for the same is not for to seek. There could always be a constant movement of the eligible voters in such constituencies to places outside the constituencies and also the requirement of the eligibility condition so far as registration in the electoral roll of teachers" constituency is concerned (teaching experience) is liable to alteration. In such circumstances, the legislature had thought it prudent to lay down that the revision of electoral rolls for graduates"/teachers" constituencies should involve the same process which is involved in the preparation of a fresh roll.

11. Insofar as Section 22 is concerned, we find that the requirement of an eligible voter to submit fresh application in Form 18 or 19 every six years adequately takes care of the requirements spelt out by Section 22 of the 1950 Act, namely, that an eligible voter shall not be deleted from the electoral roll without an opportunity. The said requirement, in our considered view, is adequately satisfied by engrafting in the procedure for revision Under Sub-rule (4A) of Rule 31 of the 1960 Rules the same procedure as applicable to preparation of a fresh electoral roll.

12. On the view that we have taken, we find that Clause 5(f) prescribed by the notice dated 01.10.2007 is in conformity with the requirement of Sub-rule (4A) of Rule 31 of 1960 Rules and the High Court had fallen into error in taking the contrary view as noticed above.

13. We, therefore, set aside the order of the High Court and uphold the validity of Clause 5(f) of notice dated 01.10.2007 as being in conformity with the requirements spelt out by the relevant provisions of the statutes as indicated above. The appeal is accordingly allowed.