
(2026) 04 GAU CK 0155
In the Gauhati High Court
Case No : WPC Of1683 Of 2026

Fayaj Ali And 64 Ors

APPELLANT

Vs

Election Commission Of India And 4 Ors

RESPONDENT

Date of Decision : 02-04-2026

Acts Referred:

Citation : (2026) 04 GAU CK 0155

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : S B Laskar, D Dutta, H A Laskar

Final Decision : Disposed Of

Judgement

Manish Choudhury, J

1. Heard Mr. H.A. Laskar, learned counsel for the petitioners; Ms. S. Kataki, learned Standing Counsel, Election Commission of India [ECI] for the respondent nos. 1, 2, 4 & 5; and Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam for the respondent no. 3.

2. The petitioners, sixty-five in nos., have joined together to institute the present writ petition under Article 226 of the Constitution of India stating that they have a common cause of action to espouse.

3. The petitioners have claimed that they are residents of Village – Shombhu Nagar, Post Office – Kotamoni Bazar, Pin – 788728, District – Sribhumi, Assam. The petitioners have stated that for a long period of time they have been casting their votes in both State Legislative Assembly Elections and/or Parliamentary Elections by virtue of enrollment of their names as voters in the concerned Electoral Rolls, published from time to time. The petitioners have claimed that they had cast their votes in the previous elections for both State Legislative Assembly Elections and/or Parliamentary Elections as the voters from 125 No. Patherkandi Legislative Assembly Constituency [LAC], District – Sribhumi,

Assam. All the petitioners were issued Electoral Photo Identity Cards [EPICs] by the Election Commission of India [ECI].

4. Mr. Laskar, learned counsel for the petitioners has submitted that during the process of Special Revision of Electoral Rolls, 2026 carried out in the State of Assam, house to house verification of voters was carried out and thereafter, a draft Electoral Roll was published on 27.12.2025 inviting claims and objections from eligible voters. After disposal of the claims and objections on 02.02.2026, the final Electoral Roll for the year 2026 was published on 10.02.2026 for Polling Station no. 201 under 125 No. Patherkandi LAC. He has submitted that the names of the petitioners were initially enlisted in the final Electoral Roll published on 10.02.2026 in respect of Polling Station no. 201. But the petitioners, to their surprise, have found that their names are not traceable in the official portal maintained by the ECI.

5. Mr. Laskar has submitted that as their names are not included in the Electoral Rolls, the petitioners would be prevented from exercising the valuable right to franchise in the upcoming Legislative Assembly Election in Assam where the date, 09.04.2026 has been notified as the date of polling. He has further contended that the name of a voter whose name was included in the previous Electoral Roll and also found in the Electoral Roll published on 10.02.2026, could not have been deleted from the Electoral Roll arbitrarily and before such deletion, such a person must be given a prior opportunity of being heard. But, none of the petitioners was afforded any prior opportunity of being heard.

6. When the writ petition was moved on 23.03.2026, Ms. Kataki, learned Standing Counsel, ECI was requested to obtain instructions as to whether the names of the petitioners are enrolled in the official electoral database maintained by the ECI. Today, Ms. Kataki has submitted, upon receipt of instructions, that out of the sixty-five nos. of petitioners, the names of the petitioner no. 3, petitioner no. 1 [reflected as Fayaj Ali], Petitioner no. 4 [reflected as Fuchsna Begom], petitioner no. 6 and petitioner no. 62 [never deleted] are included in the Electoral Roll and they can exercise right to franchise in the General Election. The names of the remaining sixty nos. of petitioners' are deleted from the Electoral Roll on the ground that they have permanently shifted from the areas which fall under 125 Patherkandi LAC.

7. Mr. Laskar has canvassed that the remaining sixty nos. of petitioners are still continuing to reside in the addresses, as recorded in the EPICs and mentioned above, that is, within the territorial limits of 125 Patherkandi LAC and the respondent authorities have acted illegally and arbitrarily to delete the names of the sixty nos. of petitioners from the Electoral Roll.

8. As the names of five nos. of petitioners are already included in the Electoral Roll, the said petitioners, that is, the petitioner no. 3, petitioner no. 1 [reflected as Fayaj Ali], Petitioner no. 4 [reflected as Fuchsna Begom], petitioner no. 6 and petitioner no. 62 [never deleted], do not have any further cause of action to

pursue the writ petition. Mr. Laskar has accepted such position. In so far as the remaining sixty nos. of petitioners are concerned, the aspect of deletion of their names are required to be considered vis-à-vis the provisions of the Representation of the People Act 1950 read with the Registration of Electors Rules, 1960.

9. Ms. Kataki, learned Standing Counsel, ECI has submitted that ordinarily, prior to deletion of name of a person from electoral roll, such a person is to be given a prior opportunity of being heard and any deletion of name can only be made after proper verification of facts. She has submitted that the petitioners have alleged that no prior and reasonable opportunity of being heard was given to them prior to deletion of their names from the electoral rolls. Assuming such contention of the petitioners is correct, then the petitioners have statutory remedies of filing applications under Section 23 of the Representation of the People Act, 1950 [‘the R.P. Act’, for short] at first, and thereafter, appeals under Section 24 of the R.P. Act. Instead of availing such statutory remedies, the petitioners have directly approached this Court by way of the present writ petition. Ms. Kataki has contended that since the matter of eligibility of the petitioners to be enrolled or included as voters in the electoral roll would also require determination of certain factual issues, the present writ petition is not maintainable. As the sixty nos. of petitioners have statutory remedies and they have not exhausted those remedies, the writ petition is also premature.

10. As per sub-section [3] of Section 21 of the Representation of the People Act, 1950 [‘the R.P. Act’, for short], which is with a non-obstante clause, the ECI 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. By a Notification dated 17.11.2025, the ECI had directed a Special Revision in exercise of the powers under Section 21 of the R.P. Act with reference to 01.01.2026 as the qualifying date in the State of Assam. After carrying the Special Revision, the electoral roll has been published on 10.02.2026.

11. As the provisions of Section 22, Section 23 and Section 24 of the R.P. Act are of relevance, they are reproduced herein for ready reference :-

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.

23. Inclusion of names in electoral rolls. —

[1] 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 that roll.

[2] 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 after proper verification of facts in such manner as may be prescribed : Provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

[3] No amendment, transposition or deletion of any entry shall be made under Section 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.

[4] The electoral registration office may for the purpose of establishing the identity of any person require that such person may furnish the Aadhaar number given by the Unique Identification Authority of India as per the provisions of the Aadhaar [Targeted Delivery of Financial and Other Subsidies, Benefits and Services] Act, 2016 [18 of 2016] :

Provided that the electoral registration officer may also require the Aadhaar number from persons already included in the electoral roll for the purpose of authentication of entries in electoral roll and to identify registration of name of the same person in the electoral roll of more than one constituency or more than once in the same constituency.

[5] Every person whose name is included in the electoral roll may intimate his Aadhaar number to such authority in such form and manner as may be prescribed, on or before a date to be notified by the Central government in the

Official Gazette.

[6] No application for inclusion of name in the electoral roll shall be denied and no entries in the electoral roll shall be deleted for inability of an individual to furnish or intimate Aadhaar number due to such sufficient cause as may be prescribed : Provided that such individual may be allowed to furnish such other alternate documents as may be prescribed.

24. Appeals.—

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

[a] to the district magistrate or additional district magistrate or executive magistrate or district collector or an office of equivalent rank, from any order of the electoral Registration Officer under Section 22 or Section 23.

[b] to the chief electoral officer, from any order of the district magistrate or the additional district magistrate under clause [a].

12. As per the provisions contained in Section 22, if any deletion of a person's name from the electoral roll is to be made on the grounds mentioned in clause [a], clause [b] and clause [c] by the jurisdictional Electoral Registration Officer, then such deletion can be made only after giving the person concerned a reasonable opportunity of being heard in respect of the action proposed [that is, deletion] to be taken in relation to him, that too, after proper verification of facts in such manner as may be prescribed. As per Section 2[h] of the R.P. Act, 'prescribed' means prescribed by rules made under the R.P. Act.

13. As per the provisions of Section 23, 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 that roll. 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 after proper verification of facts in such manner as may be. No direction for the inclusion of a name in the electoral roll of a constituency shall be given under Section 23, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.

14. It is within the right of the remaining sixty nos. of petitioners, save and except the names of the petitioner no. 3, petitioner no. 1 [reflected as Fayaj Ali], Petitioner no. 4 [reflected as Fuchsna Begom], petitioner no. 6 and petitioner no. 62 [never deleted], to make an application under Section 23 for inclusion of their names in the electoral roll before the jurisdictional Electoral Registration Officer as, according to the remaining sixty nos. of petitioners, their names were unjustifiably deleted from the electoral roll without following the procedure prescribed in Section 22.

15. The Registration of Electors Rules, 1960 ['the Registration Rules', for short]

are framed under the R.P. Act, 1950. Rule 26 of the Registration Rules has provided for correction of entries and inclusion of names in electoral rolls. Sub-rule [1] of Rule 26 has prescribed for the forms for an application under sub-section [1] of Section 23. As per sub-rule [3] of Rule 26, the Registration Officer shall, immediately on receipt of such application, direct that one copy thereof be pasted in some conspicuous place in his office together with a notice inviting objections within a period of seven days from the date of such posting. A mandate is contained in sub-rule [4] of Rule 26 to the effect that the Registration Officer shall, as soon as may be after the expiry of the period specified in sub-rule [3], consider the application and objections thereto, if any, received by him and shall, if satisfied, direct the inclusion, deletion, correction or transposition of entries in the roll, as may be necessary. A mandate is also embodied to the effect that when an application is rejected by the Registration Officer, he shall record in writing a brief statement of his reasons for such rejection.

16. Section 24 of the R.P. Act, 1950 has provided for appeals against any order passed by the jurisdictional Electoral Registration Officer under Section 23 of the R.P. Act, 1950. A first appeal would lie to the District Magistrate or Additional District Magistrate or Executive Magistrate or the District Collector or an office of equivalent rank from and order of the Electoral Registration Officer under Section 23. A second appeal would lie to the Chief Electoral Officer from any order of the District Magistrate or the Additional District Magistrate.

17. From the afore-stated statutory provisions, it is evident that if the remaining sixty nos. of petitioners are aggrieved by the deletion of their names from the electoral roll of 125 Patherkandi LAC, they have the statutory remedy of filing an application under Section 23[1] of the R.P. Act, 1950 at first. The jurisdictional Electoral Registration Officer is obligated to pass an order on such application within the prescribed time limit either allowing the application for inclusion or rejecting the application. If any application is to be rejected, then the Electoral Registration Officer shall have to record in writing a brief statement of his reasons for such rejection. If in the event application[s] of the petitioner[s] is/are rejected, then the petitioner[s] has/have the statutory remedy of filing two appeals, one after the other, under Section 24 of the R.P. Act.

18. Mr. Laskar, learned counsel for the petitioners has submitted that the remaining sixty nos. of petitioners have all the supporting documents to support their claim that their names have been arbitrarily deleted from the electoral roll published for 125 Patherkandi LAC and the said petitioners are in a position to file such an application under Section 23[1] of the R.P. Act, 1950 within the shortest possible time.

19. It has been brought to notice of the Court that by a Notification dated 16.03.2026 published in the Assam Gazette on 16.03.2026, the ECI has appointed the dates of election to the Legislative Assembly Constituencies of Assam. As per the Notification, the last date of making nominations was 23.03.2026 and the date by which the election is to be completed is 06.05.2026.

Therefore, any application filed under Section 23[1] of the R.P. Act is possible to be considered after 06.05.2026.

20. In view of presence of such statutory, adequate and efficacious remedy and considering that certain factual aspects would fall for consideration in the process, the writ petition is disposed of with the following observations and directions :-

[i] The sixty nos. of petitioner[s] will file application[s] under Section 23[1] R.P. Act before the jurisdictional Electoral Registration Officer along with the documents in support of their claim for inclusion of the name[s] in the electoral roll published for 125 Patherkandi LAC preferably within a period of fifteen days from 06.05.2026;

[ii] If such application[s] are filed, the jurisdictional Electoral Registration Officer shall consider such application[s] in terms of the mandate contained in Section 23, R.P. Act read with Rule 26 of the Registration Rules so that the application[s] is/are decided by abiding to the statutory timeline;

[iii] In the event the Electoral Registration Officer finds that any of the petitioner[s] name[s] deserve[s] to be included in the electoral roll, the necessary order[s] is/are to be passed accordingly;

[iv] If in the event the Electoral Registration Officer rejects any application, then the same shall be with a brief statement of reasons and the order is to be communicated to the concerned petitioner forthwith thereafter; and

[v] If after the decision of the jurisdictional Electoral Registration Officer any of the petitioners finds himself aggrieved in any manner, such petitioner would be at liberty to avail the statutory remedy under Section 24 of the R.P. Act.