
(2008) 08 MP CK 0028
In the Madhya Pradesh High Court

Manu Bhai Tripathi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Cantonments Act, 2006 — Section 12, 13, 2, 28, 31
Constitution of India, 1950 — Article 226

Citation : AIR 2008 MP 309 : (2009) ILR (MP) 1225 : (2009) 1 MPHT 9 : (2009) 2 MPLJ 191

Hon'ble Judges : A.K. Patnaik, C.J.; Sanjay Yadav, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J.

The petitioner who is a resident of Sagar Cantonment has filed this writ petition as a Public Interest Litigation challenging the preparation of final electoral rolls of the Sagar Cantonment for elections to the Sagar Cantonment Board.

The relevant facts briefly are that the Cantonments Act, 1924 was replaced by the new Cantonments Act, 2006 (for short, "the 2006 Act") by Parliament. The 2006 Act was brought into force by notification dated 18-12-2006. u/s 31 of the 2006 Act, the Central Government made and notified on 21-8-2007 the Cantonment Electoral Rules, 2007 (for short "the 2007 Rules"). Thereafter the Sagar Cantonment Board undertook the demarcation of wards in Sagar Cantonment in accordance with the 2007 Rules. The petitioner filed his objection to the revision of the wards in the Sagar Cantonment stating that there have been lot of encroachments resulting in increase of number of voters and that the encroachers have no right to be included in the electoral rolls. By order dated 12-9-2007, the Cantonment Board, Sagar disposed of the objections holding inter-alia that the present exercise is only to fix the boundaries of wards and not to make the voter list and the petitioner may submit his objections at the time of preparation of the electoral rolls, which will be considered. Thereafter, the

preliminary electoral rolls of the Sagar Cantonment were published by a notice on the office of the Cantonment Board on 20-11-2007 but the petitioner did not file any objection to the inclusion of names of non-eligible persons in the electoral rolls and the final electoral rolls were published. Aggrieved, the petitioner has filed this petition under Article 226 of the Constitution for appropriate reliefs.

At the hearing, Mr. Adarsh Muni Trivedi, learned Senior Counsel appearing for the petitioner submitted that u/s 28 of the 2006 Act, only a person who has resided in the Cantonment for a period of not less than six months immediately preceding the qualifying date shall be entitled to be enrolled as an elector. He submitted that Section 2(zt) of the 2006 Act defines a "resident" in relation to a Cantonment as a person who maintains therein a house or a portion of a house. He further submitted that in *Union of India and Others Vs. Dudh Nath Prasad*, , the Supreme Court relying on its earlier decision in *Jagir Kaur and Another Vs. Jaswant Singh*, , has taken a view that a casual stay or a flying visit to a particular place would not be included in the meaning of the word "reside". He submitted that persons who do not have any residence in the Sagar Cantonment and have encroached in different places of Sagar Cantonment or who are on training for a short period and are living in tents have been included in the electoral rolls of Sagar Cantonment for elections to the Cantonment Board. He further submitted that under Rule 4 of the Cantonment Land Administration Rules, 1937, land in the Cantonment has been classified into Class "A" land, Class "B" land and Class "C" land. He submitted that the occupants of Cantonment land specified as Class "C" land and Class "B-4" land cannot be included in the electoral rolls of the Cantonment and only those residents who were residing in the area demarcated in the GLR of Survey of India are entitled to be included in the electoral rolls. He argued that the final electoral rolls have been prepared disregarding these provisions of Rule 4 of the Cantonment Land Administration Rules, 1937 and persons who are not residents of the Sagar Cantonment and have a nomadic existence in the Sagar Cantonment have been illegally enrolled in the final electoral rolls of the Sagar Cantonment for elections to the Cantonment Board. He cited the decision in *Chief Executive Officer Vs. Surendra Kumar Vakil and Others*, in which a discussion of the provisions of the Cantonment Land Administration Rules, 1937 finds place.

Mrs. Indira Nair, learned Senior Counsel appearing for the respondent No. 3 Sagar Cantonment Board and Mr. Dharmendra Sharma, learned Assistant Solicitor General appearing for the respondent No. 1 Union of India, on the other hand, relying on the replies filed by the respondents 1 and 3 submitted that Section 28 of the 2006 Act only says that every person who has resided in the Cantonment for a period of not less than six months immediately preceding the qualifying date shall be entitled to be enrolled as an elector if he is not otherwise disqualified. They submitted that Section 28 of the 2006 Act does not make any distinction between persons who are encroachers and persons who are not encroachers, nor does it make a distinction between persons who are residing in

Class "A" land or Class "C" land or Class "B-4" land. They further submitted that the word used in Section 28(1) of the 2006 Act is "resided" and hence the definition of "resident" in Section 2(zt) of the 2006 Act has no relevance for deciding who is and who is not qualified to be enrolled as an elector in the electoral rolls of a Cantonment. They submitted that the word "resident" finds place in Sections 13(7), 65(1)(iv), 348(2) and 348(31) of the 2006 Act and it is for this reason that Section 2(zt) of the 2006 Act defines the word "resident".

Mrs. Nair and Mr. Sharma further submitted that Rule 9 of the 2007 Rules provides that every person who is eligible for enrolment as an elector under Sub-section (1) of Section 28 of the 2006 Act, and is not otherwise disqualified under Sub-section (2) of the said section shall be enrolled as an elector. They submitted that according to these provisions of Section 28 of the 2006 Act and Rule 9 of the 2007 Rules, the electoral rolls of the Sagar Cantonment were prepared. They finally submitted that in any case after the preliminary electoral rolls were prepared and published, the petitioner did not file any objection to the inclusion of names of any person in the electoral rolls and hence, at this stage, the petitioner cannot raise an objection that persons who are not eligible to be included as electors in the electoral rolls of the Sagar Cantonment have in fact been included as electors in the final electoral rolls of the Sagar Cantonment.

Mrs. Nair submitted that in *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another*, the Supreme Court has held that in finding out the legislative intention, Judges not only listen to the voice of the Legislature but also listen attentively to what the Legislature does not say. She submitted that since the Legislature has not said in Section 28 that only persons who maintain houses in the Cantonment will be qualified to be electors, the Court cannot hold that only persons who maintain houses in the Cantonment area will be entitled to be included in the electoral rolls as electors for the elections to the State of Jharkhand v. Govind Singh for the proposition that when the words of the statutes are clear, plain or unambiguous and they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences because the intention of the legislature is primarily to be gathered from the language used by the legislature.

In *Jagir Kaur and Another Vs. Jaswant Singh*, the word "resides" used in Section 488 of the Criminal Procedure Code, 1898 came to be considered and the Supreme Court held:

In the Oxford Dictionary it is defined as : "dwell permanently or for a considerable time; to have one's settled or usual abode; to live in or at a particular place." The said meaning, therefore, takes in both a permanent dwelling as well as a temporary living in a place. It is, therefore, capable of different meanings, including domicile in the strictest and the most technical sense and a temporary residence. Whichever meaning is given to it, one thing is obvious and it is that it does not include a casual stay in, or a flying visit to a particular place. In short, the meaning of the word would, in the ultimate

analysis, depend upon the context and the purpose of a particular statute.

It is thus clear that the word "reside" includes not only permanent residence but also temporary residence but does not include a flying visit to or a casual stay in a particular place and in the ultimate analysis the meaning of the word "reside" will depend upon the context and the purpose of a particular statute in which the word is used. This decision has been followed by the Supreme Court in *Union of India and Others Vs. Dudh Nath Prasad*, . Thus, the word "resided" in Section 28(1) of the 2006 Act has to be interpreted in the context of the 2006 Act.

Section 2(zt) and Section 28 of the 2006 Act on which reliance has been placed, are quoted hereinbelow:

2(zt) "resident", in relation to a cantonment, means a person who maintains therein a house or a portion of a house which is at all times available for occupation by himself or his family even though he may himself reside elsewhere, provided that he has not abandoned all intention of again occupying such house either by himself or his family.

Qualification of electors.- (1) Every person who, on such date *as may be fixed by the Central Government in this behalf by notification in the Official Gazette hereinafter in this section referred to as "the qualifying date", is not less than eighteen years of age and who has resided in the cantonment for a period of not less than six months immediately preceding the qualifying date shall, if not otherwise disqualified, be entitled to be enrolled as an elector.

Explanation - When any place is declared a cantonment for the first time, or when any local area is first included in a cantonment, residence in the place or area comprising the cantonment on the aforesaid date shall be deemed to be residence in the cantonment for the purposes of this subsection.

(2) A person notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he on the qualifying date:

(i) is not a citizen of India, or

(ii) has been adjudged by a competent Court to be of unsound mind, or

(iii) is an undischarged insolvent, or

(iv) has been sentenced by a Criminal Court to imprisonment for a term exceeding two years for an offence which is declared by the Central Government to be such as to unfit him to become an elector or has been sentenced by a Criminal Court for any offence under Chapter IX-A of the Indian Penal Code (45 of 1860):

Provided that any disqualification incurred by a person under Clause (iv) shall terminate on the lapse of three years from the expiry of the sentence or order.

(3) If any person having been enrolled as an elector in any electoral roll subsequently becomes subject to any of the disqualifications referred to in Sub-

section (2), his name shall be removed from the electoral roll unless, in the case referred to in Clause (iv), the disqualification is removed by the Central Government.

Section 28(1) of the 2006 Act says that every person who has resided in the Cantonment for a minimum period of six months before the qualifying date is entitled to be enrolled as an elector. Hence, temporary residence in the Cantonment for a period of six months and not a flying visit to or a casual stay in the Cantonment will entitle a person to be included in the electoral roll as an elector. Section 2(zt) of the 2006 Act, however, defines "resident" in relation to a Cantonment to mean a person who maintains therein a house or a portion of a house. The word "resident" has a different meaning than the word "reside". A person is a resident of a particular place only if he maintains a house or a portion of a house at that particular place and not otherwise, but a person can physically reside in a particular place without maintaining a house or a portion of a house in that particular place. Hence, for interpreting Section 28(1) of the 2006 Act which uses the word "resided" and does not use the word "resident", the definition of "resident" in Section 2(zt) of the 2006 Act is not relevant. As pointed out by Mrs. Nair, the word "resident" finds place in Sections 12(7), 65(1), 348(2) and 348(31) of the 2006 Act and for this reason Section 2(zt) of the 2006 Act defines the word "resident".

Rule 9 of the 2007 Rules is quoted herein below:

9. Qualification of elector - Every person who is eligible for enrolment as an elector under Sub-section (1) of Section 28 of the Act, and is not otherwise disqualified under Sub-section (2) of the said section shall be enrolled as an elector.

It will be clear from Rule 9 of the 2007 Rules that every person who is eligible for enrolment as an elector under Sub-section (1) of Section 28 of the 2006 Act and is not otherwise disqualified under Sub-section (2) of the said section has to be enrolled as an elector. Thus, under the 2007 Rules also, once a person has even temporarily resided in the Cantonment for a period of six months immediately preceding the qualifying date and is not otherwise disqualified under Sub-section (2) of Section 28 of the 2006 Act is entitled to be enrolled as an elector. There is no provision in Sub-section (2) of Section 28 of the 2006 Act disqualifying an encroacher or a person occupying Class "C or Clause "B-4" land or residing outside the residential locality demarcated in GLR of the Survey of India to be an elector.

Hence on a reading of different provisions and in particular Section 28 of the 2006 Act and on a reading of different provisions and in particular Rule 9 of the 2007 Rules, we have no doubt in our mind that all persons residing even temporarily for a period of six months in the Cantonment, whether in any house maintained by them or in any other place, are entitled to be enrolled as electors in the electoral rolls of the Cantonment and the contention of the petitioner that

encroachers or persons residing in tents are not entitled to be enrolled as electors in the electoral rolls of the Cantonment is misconceived. We, however, make it clear that persons making a casual visit to and casually staying and have not been residing in the Cantonment for a period of six months preceding the qualifying date are not entitled to be included in the electoral rolls of a Cantonment.

Rules 12 and 13 of the 2007 Rules which deal with notice of publication of electoral rolls and claims and objections to the inclusion of a name in the electoral roll, are extracted hereinbelow:

12. Notice of publication of electoral rolls:

(1) Copies of the electoral roll prepared under Rule 10 shall be displayed at the notice board of the office of Cantonment Board, and at the same time notice of their preparation shall be displayed in Form II at the notice board of the said Office and at such places throughout the Cantonment, there being at least one such place in each ward, as the Board, or where a Board is not constituted, the Officer Commanding the Station, may specify.

(2) The notice shall also specify the mode in which claims and objections are to be preferred and disposed of.

Claims and objections:

(1) Every claim for the inclusion of a name in the electoral roll and every objection to an entry therein shall be made within a period of twenty days from the date of publication of the notice referred to in Rule 12.

(2) Every claim made under Sub-rule (1) shall be

(a) in Form III.

(b) Signed by the person desiring his name to be included in the roll.

(c) Countersigned by another person whose name is already included in that part of the roll in which the claimant desires his name to be included.

(3) Every objection to the inclusion of a name in the roll shall be:

(a) in Form IV.

(b) Preferred only by a person whose name is already included in that roll.

(c) Countersigned by another person whose name is already included in that part of the roll in which the name objected to appears.

(4) Every objection to any particular in an entry in the roll shall be:

(a) in Form IV-A; and

(b) Preferred only by the person to whom that entry relates.

(5) Every claim or objection shall be presented to the Chief Executive Officer in person or be sent by registered post to the Chief Executive Officer.

(6) If any objection relates to the inclusion in the electoral roll of the name of a person other than the objector, the objection shall be filed in duplicate.

(7) The Chief Executive Officer shall reject any claim or objection which is not made within the period or in the form and manner specified in this rule.

It is clear from Rules 12 and 13 of the 2007 Rules that when the preliminary electoral rolls are prepared and displayed in the notice board of the Cantonment Board, objection to any entry in the electoral roll can be made within a period of twenty days from the date of publication of the notice. The petitioner had filed an objection at the stage of revision of wards that there have been lot of encroachments resulting in inclusion of illegal voters and en-croachers have no right to be included in the electoral rolls, but by order dated 12-9-2007 of the Cantonment Board, the objection was rejected saying that the petitioner may submit objections at the time of preparation of voters-list. Thereafter, when the preliminary electoral rolls were published under Rule 12 of the 2007 Rules on 20-11-2007, the petitioner did not raise any objection to the inclusion of any name in the electoral rolls on the ground that he has not been residing in the Cantonment for six months or more preceding the qualifying date and was only an encroacher or a visitor living in the Sagar Cantonment. Since the petitioner did not raise any such objection, he cannot now raise a contention before the Court in the present writ petition that even persons making flying visit to or casually staying in the Sagar Cantonment had been included in the final electoral rolls published by the Sagar Cantonment Board.

In the result, we do not find any merit in the writ petition and we dismiss the same 8 and vacate the interim order dated 13-5-2008. There shall be no orders as to costs.