
(2002) 02 DEL CK 0049
In the Delhi High Court
Case No : CW No. 531 of 2002

Sekar @ Balasunderam

APPELLANT

Vs

Election Commission of India and Another

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Citation : (2002) 3 AD 112

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : P.N. Lekhi, R. Mohan, M.A. Krishnamoorthy and M.A. Chinnasamy, for the Appellant; K.K. Venugopal S.K. Mendiratta, P.R. Chopra, K.V. Viswnathan, N. Jothi and Kunwar Ajit Mohan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner, an Indian citizen and a member of Dravida Munnetra Kazakam (DMK), a political party in Tamil Nadu, seeks by this writ petition a mandamus for deferring the elections to be held in Andipatti Assembly Constituency of Tamil Nadu till the electoral rolls are rectified. A direction is also sought for rectification of the electoral rolls prepared in Andipatti Constituency and to hold election along with other Constituencies, namely Saidapet and Vanniyampadi in Tamil Nadu. Petitioner also seeks disciplinary action to be taken against erring officers responsible for committing irregularities in the preparation of voters list in the Andipatti Assembly Constituency.

2. Learned counsel for the Election Commission on receiving advance copy of petition had appeared when the writ petition came up for admission. He raised an objection as to the maintainability of the writ petition. Without prejudice to the contentions on maintainability, Election Commission has filed an affidavit averring that complaints received from the petitioner and others, were duly considered and investigated. Corrective action was taken where necessary and complaints were dealt with in accordance with law.

3. Ms. J. Jayalalithaa, who is herself a candidate for the by-election, on behalf of AIADMK, moved an application (CM.1101/02) for impleadment in the writ petition. She was impleaded as respondent No. 3, with no objection from the petitioner.

4. Mr. P.N. Lekhi, senior counsel for the petitioner, was heard in support of the writ petition on 12th and 13th February, 2002. Mr. S.K. Mendiratta, counsel for Election Commission and Mr. K.K. Venugopal, senior counsel for Ms. J. Jayalalithaa, were also heard and judgment was reversed on 13.2.2002.

5. Petitioner urged that as a citizen of India, he has a fundamental right to elect representatives in a free and fair, election. An election, which is not conducted in accordance with law, deprives the citizen of this right. Petitioner submits that the by-election to the Andipatti Constituency, scheduled to be held on 21.2.2002, is neither likely to be free nor fair. The rights of citizens are in jeopardy on account of respondent No. 1 Election Commission of India, having failed to discharge its constitutional obligation of ensuring free elections by preparation of proper electoral rolls. It is stated that the AIADMK party had won majority of seats in the Tamil Nadu Assembly elections held in May, 2001 and respondent No. 3, Ms. J. Jayalalithaa was elected as a leader of the legislative party and sworn in as Chief Minister of the State by the Governor. However, her appointment as the Chief Minister was quashed by the Hon'ble Supreme Court of India in the judgment reported at B.R. Kapur v. State of T.N. and Anr. : AIR2001SC3435 . In the event that followed, the High Court of Madras set aside her conviction in the case under Prevention of Corruption Act and Indian Penal Code. She became eligible to contest the election. The sitting MLA of Andipatti Constituency vacated his seat to enable Ms. Jayalalithaa to contest the vacated seat of Andipatti Constituency. Two other assembly seats, namely, Saidapet and Vanniyampadi fell vacant by reason of death of the respective MLAs. It is urged that the AIADMK party is, Therefore, extremely anxious to win and retain this seat for Ms. J. Jayalalithaa.

6. The Election Commission decided to hold the by-election in the above three Assemblies segments, namely, Andipatti, Saidapet and Vanniyampadi with the following schedule:-

Last date of filing nominations 24.1.2002. Scrutiny 25.1.2002. Withdrawal of nomination 28.1.2002. Election 21.2.2002 Counting 24.2.2002.

7. Petitioner contends that the Ruling Party, namely AIADMK, after the announcement of the elections is going about manipulating voters list in a most blatant manner. The names of many bogus, non residents and under age, ineligible voters have been included in the list, while those of genuine voters got deleted and omitted. 17043 names have been added in the list of voters in Andipatti constituency against the initial strength of 191,172.

8. Petitioner and the functionaries of its party including the General Secretary complained with regard to these manipulations and malpractices to the Election

Commission. The Election Commission deputed its Secretary, Mr. K.J. Rao to visit the three Constituencies to investigate the complaints. According to Mr. Lekhi, the breach of Rules and rigging and manipulation of the electoral rolls, was of such stupendous magnitude that it compelled the Election Commission, to postpone the elections in Saidapet and Vanniyampadi Constituencies. Disciplinary action against the Municipal Commissioner of Madras is also pending. However, respondent No. 1 deliberately has chosen to turn a blind eye to the malpractices in Andipatti Constituency from where Ms. J. Jayalalithaa, the former Chief Minister is contesting. The inclusion of name in the Electoral Roll is can be done upon submission of Form 6 filled by the applicant. It is alleged that functionaries of AIADMK party filled up and submitted the forms. Objections were not invited. No enquiry was made whether the persons being included, were actual residents of the constituency or not? List of new voters had not been exhibited publicly as required. Summary enquiry was not held. In other words, it is contended that there was breach of electoral rules. All this has been done to give the cutting edge to AIADMK, to tilt the balance and ensure the victory of Ms. J. Jayalalithaa. Petitioner alleges partiality towards AIADMK party and respondent Ms. J. Jayalalithaa. It is urged that while similar complaints in respect of other two Constituencies i.e. Saidapet and Vanniyampadi resulted in Election Commission postponing the by-elections in the said constituency, it did nothing in respect of Andipatti Constituency. The finalization of the electoral rolls, without compliance with the rules has conferred an unfair advantage on AIADMK. Members of Parliament of DMK Party, its President also complained to Election Commission and sought postponement of the election from Andipatti till electoral rolls were properly prepared. Petitioner alleges that the Election Commission has chosen to apply double standards and not used the same yard stick as it applied, while assessing the complaints for Saidapet and Vanniyampadi Constituencies.

9. As regards the enquiry done by Mr. K.J. Rao, for Andipatti Constituency, the same is labelled as perfunctory and completion of a mere formality. Mr. Lekhi submits that the Election Commission simply forwarded the complaints to the Electoral Officers, who just completed the formalities in a ritual manner.

10. Learned senior counsel, Mr. Lekhi submitted that the particulars of bogus voters and non-residents, were furnished, which were dealt with in a perfunctory manner. He submits that petitioner has a legitimate expectation of having a fair and free election, which is sought to be denied to him. He submitted that the Election Commission should verify all these complaints, take corrective measure as it would otherwise materially affect the result by inclusion of bogus voters and exclusion of eligible voters.

11. Mr. Lekhi in developing his case for deferment of election from Andipatti constituency submitted that deferment was required to ensure that the electoral rolls were correctly prepared for conduct of free and fair elections. It was the legitimate expectation of every citizen that the Election Commission shall ensure that electoral rolls do not include names of bogus voters i.e. persons, who either

do not exist or whose names are entered contrary to the provisions of Part III of the Representation of People Act, 1951 and the Rules made there under. He relied on *Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others*, as also on *M.P. Oil Extraction and Anr. v. State of M.P.* AIR 1998 SC 145 to urge that any breach by an authority of its obligations, which tends to nullify the legitimate expectation was actionable. Mr. Lekhi next contended that the powers of the Election Commission were not unbridled and were subject to judicial review and amenable to writ jurisdiction, if actions were not in accordance with the statute. He placed reliance on *Digvijay Mote Vs. Union of India (UOI) and Others*, . He submitted that the so called finality regarding electoral rolls did not exclude or ban judicial review. Reliance was placed on *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, .

12. Petitioner had made specific complaints with full facts and relevant particulars to the Election Commission regarding the manner in which electoral rolls, encases were rigged and names which could not and should not have been included in the electoral rolls of Andipatti Constituency, were included, but to no avail. Here he compared the situation to cases of mass copying in the examinations, which stripped the University of its credibility, as noticed by the Supreme Court in *Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another*, . He submitted that the Election Commission was duty bound to remove the grievance and ensure that its duties were performed regularly, lawfully and properly. The Election Commission failed to fulfill its constitutional obligation under Article 324 of the Constitution of India, which was the cause of action for the present petition. Such challenge could not be made in accordance with the provisions of the Representation of People Act, especially where there was mass subversion of law and where elections to the other two Constituencies were counter mended for same and similar reasons, without insistence that the aggrieved party should resort to the prescribed procedure under the Representation of People Act. He submitted that the failure of the Election Commission to perform and discharge its constitutional obligation and public duties, had affected the democratic structure of the country, which is an essential feature and basic structure of our Constitution.

13. Interestingly, while dealing with the judgments of the Supreme Court under Article 324 to 329, where departure is made from principles governing judicial review, Mr. Lekhi sought to explain the said decisions on doctrine of necessity, since it involved entire election process of the State. In the instant case, he submitted, doctrine of necessity was not applicable as it was a case of bye-election of one constituency. It did not involve the entire democratic elections to the country. If the elections to the other two Constituencies could be postponed, for similar reasons, the present election could also await the rectification of electoral roll. besides, the Assembly in the present case was functional. It was not a case of election being indefinitely postponed.

14. Learned counsel, to sum up, submitted that the challenge was to violation

and disregard of the constitutional duty under Article 324 of the Constitution of India. This challenge could not be redressed in an election petition. The said challenge was independent of whether the election process had started or not. The start of election process could not mean that injustice should be continued to the inflicted on the citizen and the violation of Constitutions was permitted to go unchecked.

15. It would be appropriate at this stage to notice the Explanation given by the Election Commission in response to the allegation of failure to discharge its obligation under Article 324 of the Constitution of India in the affidavit filed. The Commission on 17.8.2001, had directed revision of the electoral rolls of all the 343 Constituencies in the state of Tamil Nadu. The house to house verification of voters with reference to the earlier electoral rolls was conducted between 5.11.2001 and 4.12.2001 by the enumerators. The draft electoral rolls had been published on 24.12.2001, inviting claims and objections. The notification calling upon the elections was issued on 17.1.2002 and the poll is scheduled for 21.2.2002. On receipt of complaints, the Commission had deputed its Secretary, Mr. K.T. Rao, who duly visited the Saidapet Constituency on 10.1.2002, Andipatti Constituency on 11.1.2002 and Vanniyampadi Constituency on 12.1.2002. The enquiry revealed large number of discrepancies in the preparation of Electoral Rolls in Saidapet Constituency and Vanniyampadi Constituency, while Andipatti Constituency did not suffer from the same. The Election Commission after due consideration and deliberation of the report and feed back from the Secretary, was satisfied that the electoral roll of Andipatti Constituency had been properly revised. It did not suffer from major defects and specific cases of bogus voters or under age persons, would be duly enquired and, Therefore, poll as scheduled could be held. The Election Commission duly considered the complaints with regard to the non-compliance with the Rules, namely, i) Copy of the draft electoral rolls published on 24.12.2001 not being supplied to the parties, as per rules; ii) Public Notice in respect of claim and objections filed in Forms 6 and 7 not being given in Forms 9 and 10; and iii) the electoral roll containing large number of bogus and under age voters.

16. It is stated in the affidavit that two copies of the draft electoral rolls were duly supplied to the District Secretary of DMK on the very date of its publication. Acknowledgment has been filed on record. Public notices in the prescribed forms 9 and 10 were duly given. The relevant portions of draft electoral rolls were published at the polling stations. It is stated that 8129 claims were received in form 6 and 157 objections were received in form 7. As a result of verification only 5878 claims and 131 objections were accepted and the rest were rejected. The electoral rolls of the Constituencies were finalized on the basis of claims and objections and were published on 12.1.2002. The increase in the total number of eligible voters, is attributable to the decrease in the voting age. The allegation of inclusion of bogus voters has also been found to be incorrect. The Sub-Collector, Periakulam had conducted a proper enquiry. The Election Commission had even sent a special observer, an IAS Officer from Delhi. It is submitted that one of the

village Secretary of DMK Party, who was signatory to one of the complaints gave a statement that upon verification no bogus voters were found in Rajathani village. It may be noted, at this stage, that petitioner has filed rejoinder, where the said statement is said to have been obtained under undue pressure and coercion from the said Sh. P. Chinappa. The enquiry report has also been produced. The enquiry report gives reasons for deferment of Saidapet and Vanniyampadi Constituencies. In the Saidapet Constituency, Commission found that form 6 applications had been collected by a functionary of the political party. The Commissioner of Chennai Corporation himself had received applications and handed them over. Some of the applicants denied having made the application on sample verification. Some were not found to be staying in the same constituency. Various irregularities including the non-functioning of the Enumerators and lack of verification was found in these two constituencies. The Secretary of the Commission on scrutiny of the records in Andipatti Constituency, found that the list of inclusions, omission and corrections, were duly prepared by the Electoral Registration Officer, and had been exhibited on the notice board, as confirmed by the Election Returning Officer. The Secretary also went over the inclusions and found that about 476 inclusions were on account of missing number of voters enumerated and entered in the computer, but had not appeared in the draft electoral roll. The claim applications, thus, accepted were about 5402. The Secretary also satisfied himself by making sample enquiries that the forms have been signed by the concerned applicants though they were in the same hand-writing. The forms have been received at designated places. Certain house visits were done by the Secretary to verify on sample basis and in some cases, where persons were not found to be living, Explanation given was that they work in other places and come home at weekends. Except for two cases, he found persons to be living at the address as given. The random checking was done by him of 20 houses in two villages in the presence of representatives of parties and persons were found to be actually residing or their relations confirmed the same if the persons were out on work.

17. Learned counsel for the Election Commission, in view of the foregoing, submitted that the writ petition having been verified and filed on 22.1.2002 i.e. after the date of notification of 17.1.2002 was not entertainable in view of the bar under Article 329(b) of the Constitution of India. Article 329(b) of the Constitution of India may be usefully reproduced:-

329. 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."

18. The submission is that seeking deferment of the election or poll is questioning the election to the Andipatti Constituency. The writ petition against the holding of any election or postponement thereof was not maintainable during the period, which the bar of Article 329(b) of the Constitution of India applied. He submitted that by a series of judicial pronouncements, the Courts have given a very wide connotation and meaning to the word "Election", as it appears in Article 329 of the Constitution of India. In this connection, reference was made to the decision of the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner-AIR (1978) SC 405*, where it was held that Article 329 provided a blanket ban on litigative challenges to electoral steps taken by the Election Commission for carrying forward the process of election to its culmination in the formal declaration of the result of election. Reliance was also placed by him on *Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav*, , where the Court while considering the plenary bar on judicial proceedings in election matters by Article 329(b) of the Constitution of India recognized the necessity of completion of the election process without interruption by way of legal proceedings in the steps and stages in between. The last date for making nomination for election in the Constituency and the date of declaration of result, were held to be the terminus a quo and terminus and quem, between which the electoral rolls must remained untouched. The amendment transposition or deletion of entries were held to be taboos in this interregnum. He also relied on *Anugrah Narain Singh and Another Vs. State of U.P. and Others*, in support of his contention that elections ought not to be deferred on the allegations of defects in electoral rolls. He relied on *Lakshmi Charan Sen and Ors. v. A.K.M. Hassan Uzzaman and Ors.-AIR 1985 SC 1233* to urge that the Court should not intervene, even when elections were imminent, while in the instant case elections were already under way. It was urged that bar of Article 329(b) would come into operation with regard to the maintainability of writ petition, which seeks to defer or postpone any election, irrespective of the ground on which the relief of deferment or postponement of the election is sought by making it appear to be a violation of constitutional mandate of free and fair elections on the ground of alleged defective electoral rolls. As regards Mr. Lekhi's submission that the process and preparation of electoral rolls was a continuous one not relatable to a particular election. He submitted that the expiry of the date for making nomination would freeze the electoral roll for the purpose of elections so notified. When the said electoral roll is sought to be challenged as being defective and deferment of the election is sought, it is in fact in substance, questioning the election, which was barred under Article 329(b) of the Constitution of India. He, Therefore, submitted the writ petition, the effect of which was to call in question the election, which was already notified and this would include a prayer of deferment or postponement of an election. The period of such ban commenced with the date of notification of election u/s 15 of the Representation of People Act and ended with date of declaration of the result. Learned counsel further submitted that the scheme of the Constitution was that the democratic process, an election must go through, any infirmity or questions as to the invalidity could be gone through after

elections. In this connection, he referred to Article 243(ZG) of the Constitution of India, relating to elections to Municipality. He submitted that the sweep of Article 329(b) was very wide to include all the Courts unlike in Article 329(A)(d) of the Constitution of India, while dealing with Administrative Tribunals, where jurisdiction under Article 136 was not excluded. He thus urged that Article 329(b) excluded and barred entertainment of any challenge in a petition under Article 226 of the Constitution of India after the notification of elections and the last date of withdrawal of nomination, till the result of the election. The submission of Mr. K.K. Venugopal as noted above sets out the correct legal position as supported by judicial precedents. There cannot be any amendment or change in Electoral Rolls after the date of nominations. The plea of deferment of elections seeking revision in Electoral Rolls amounts to calling in question the election which is hit by Article 329(b) as elaborated later.

19. Mr. S.K. Mendiratta, counsel for the Election Commission, similarly submitted that the present writ petition is not maintainable by virtue of Article 329(b) of the Constitution of India. The remedy of the petitioner, if any, was to challenge the election under the Statute i.e. the Representation of People Act u/s 100(d) (iv) on the ground of non-compliance with provisions of the Constitution, if the petitioner so desired.

20. He relied on the cases of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, ; Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. (Supra); Lakshmi Charan Sen and Ors. v. A.K.M. Hassan Uzzaman and Ors. (Supra); Indrajit Barua and Others Vs. Election Commission of India and Others, ; Anugrah Narain Singh and Anr. v. State of U.P. and Ors. (Supra) and Shyamdeo Pd. Singh v. Nawal Kishore Yadav (Supra) to support the plea that interference by Courts and litigative challenges from the date of notification of election to its result were barred. Reliance was also placed by him on A.C. Jose Vs. Sivan Pillai and Others, . He submitted that there was a complete procedure provided under the Registration of Electoral Rolls, 1960, while Rule 21 provided for inclusion of names inadvertently omitted, Rule 21-A provided for deletion of names and Rule 22 for final publication of roll. The appeal from orders deciding claims and objections were provided under Rule 23. However, once the electoral roll was finally published by virtue of Sub-rule 2 of Rule 22 it became the roll with the list of amendments as the electoral roll of the constituency. No transposition, additions, alterations or amendments were permitted in the electoral roll as finalised.

21. At this stage, I may also notice that learned counsel for the respondent has drawn my attention to a writ petition, titled Mr. V. Selvam, President, Indhiya Thamizhaga M.M.P. v. The Chief Election Commissioner, New Delhi and Anr. It was pleaded that the election to Andipatti Constituency should have been postponed like that of Saidapet and Vanniyampadi constituencies. Further, it was prayed that the by-elections at Andipatti Constituency should be held only after rectification of the electoral rolls. Similarly the ground of Election Commission

having failed to consider the objections and proceeding with elections with an improper electoral roll were raised. The Division Bench of the Madras High Court has dismissed the petition taking note of the enquiry done by the Election Commission as well as the judgments in N.P. Ponnuswami (supra), Shyamdeo Prasad Singh (supra) and Mohinder Singh Gill (supra). The Madras High Court held that Article 329(b) would bar entertainment of the petition under Article 226 of the Constitution of India. It held that there could be no interference in the election process. The court dismissed the petition at the admission stage itself.

22. Having noted the averments in the petition, legal submissions and the judgments relied on by the respective counsel, the question, which arises for consideration is of the jurisdiction of the High Court to entertain the writ petition under Article 226 of the Constitution of India in the light of the petitioner's allegation that there has been breach of the Constitutional obligation under Article 324 Constitution of India by the respondent/Election Commission of India in not ensuring proper electoral rolls. This it was claimed would affect the democratic process and the basic structure of the Constitution. Further, whether in such a situation, the High Court could entertain the petition and issue interim directions for staying the electoral process or deferment of the election in view of the bar under Article 329(b) of the Constitution of India.

23. The answer to this would turn on the meaning and scope of the term "election" as it appears in Article 329. Secondly, whether a challenge can be made on the ground of defective Electoral Rolls in writ petition. Election, as occurring in Article 329 of the Constitution of India has been held to mean and include the entire process from the issue of the notification under the Representation of People Act to the declaration of the result after polling. Reference is invited to N.P. Ponnuswami's case (Supra), wherein the Court observed, "As we have seen the most important question for determination is the meaning to be given to the word "election" in Article 329(b). That word has by long usage in connection with process of selection of proper representatives in democratic institutions acquired both a wide and narrow meaning. In the narrow sense it is used to mean the final selection of a candidate which may embrace the result of the polls when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected.....", it seems to me that the word "Election" has been used in part XV of the Constitution in the wide sense i.e. to say to connote the entire procedure to be gone through to return a candidate to the legislature." The use of expression conduct of elections in Article 324 of the Constitution of India specifically points to the wide meaning and that meaning can also be read consistently into other provisions, which occur in part XV including Article 329(b). The Supreme Court in the above case was considering whether the rejection of a nomination paper could be challenged in a writ petition. The writ petition was dismissed holding that Article 329(b) of the Constitution barred the same.

24. Again in *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.* (supra) the court held Article 329(b) introduces a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers to complete an election. Election, in this context, has a very wide connotation commencing from the notification calling the election and culminating in the final declaration of the returned candidate.

25. Similarly, in *Lakshmi Charan Sen and Ors. v. A.K.M. Hassan Uzzaman and Ors.* (supra) the Court held that 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. It must be emphasized that Election laws do not recognize political parties except in Rule 11(c) of the Registration of Electors Rules, 1960. The Court further observed that the fact that certain claims for inclusion of names in electoral rolls and objections relating to inclusion of certain names therein 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 are in force on the last date for making nominations.

26. Lastly again in *Indrajit Barua and Ors. etc. v. Election Commission of India and Ors.* (supra) the Supreme Court held "in a suitable case challenge to the electoral roll for not complying with the requirements of law may be entertained. But the election of a candidate is not open to challenge on the score of the electoral roll being defective. Holding the elections to the legislature and holding them according to law are both matters of paramount importance. The Court had also rejected the argument that the bar under Article 329(b) on a writ petition under Article 226 of the Constitution would not apply on the ground that electoral rolls on the basis of which the elections were held were invalid. The Court held that once the final electoral rolls are published, elections are held on the basis of such electoral rolls, it is not open to challenge the elections from any constituency on the ground that electoral rolls were defective.

27. The issue, as raised in para 20 has been succinctly dealt with by the Supreme Court in a recent decision in *Election Commission of India Through Secretary Vs. Ashok Kumar and Others*, . the Supreme Court in the said case was hearing the challenge to an interim order passed by the High Court, staying the notification issued by the Election Commission of India dated 28.9.1999, directing counting of votes by mixing of votes of all booths and not both wise. The Election Commission has issued the notification in the interest of free and fair election for safety and security of electors and with a view to prevent intimidation and victimisation of electors in the State. The High Court by an interim direction suspended the notification amidst progress of election proceedings. This was held to be not proper. The Supreme Court duly dealt with the question of jurisdiction of the High Court under Article 226 to issue interim directions, after commencement of the electoral process. The judgment noticed that the power of judicial review was a basis structure of Constitution and this

concept could no longer be an issue. Further, that the access to the Courts is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law, specially in cases, where the statute was silent and judicial intervention was required to redress grievance. According to what is perceived to be principles of justice, equity and good conscience. The Supreme Court in its judgment duly considered the question of exercise of jurisdiction qua the embargo and bar under Article 329. It noticed and reviewed the cases of N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and four Ors. (Supra), Mohinder Singh Gill and Anr. v. the Chief Election Commissioner, New Delhi and Ors. (Supra) and Lakshmi Charan Sen and Ors. v. A.K. Hassan Uzzaman and Ors. (Supra). It also considered the possibility of cases, where the power vested in a functionary like Election Commission was exercised in breach of law arbitrarily or malafide. An order of the Election Commission could even thought the process of election. The cases of Digvijay Mote v. Union of India and Ors. (Supra) and Anugrah Narain Singh and Anr. (Supra) were also considered.

28. The Supreme Court after reviewing the aforesaid decisions, summed up its conclusion, which is reproduced as under :-

1) "If an election, (the term "election" being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it

during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

29. In the light of the foregoing principles, as enunciated by the Supreme Court, let us consider the present case. The petitioner, as noticed, seeks deferment of the elections to the Andipatti Constituency on the ground that electoral rolls have not been properly prepared. The plea taken is that there has been failure to discharge constitutional obligation by the Election Commission. It is not in dispute in this case that with the issuance of notification calling the elections and the last date for withdrawal of nomination being over, the election process is on. Petitioner may be seeking to challenge the actions anterior to the stage of the electoral process, assuming that preparation of electoral rolls are not to be a process of election. The effect of the reliefs sought by the petitioner is deferment of the election. It is sought to be justified on the ground that electoral rolls have not been properly prepared. The Election Commission in its affidavit has clearly set out the manner in which the complaints that were received were dealt with. The Secretary of the Commission had visited the three Constituencies and after due enquiry reached a conclusion that the electoral rolls of the Andipatti Constituency did not suffer from any major infirmity, which could justify the deferment of elections. The Election Commission has also sought to explain how sample tests were done with regard to the allegations of bogus and non resident voters, included in the electoral rolls. The Secretary himself had carried out sample checks and confirmed the factum of residence of voters. Apart from the Secretary of the Commission, a special Observer an IAS Officer was also sent. One of the complainants in fact certified after verification of the cases relating to his village, there was no wrongful addition. Petitioner seeks to explain this by claiming that this affidavit was obtained under undue pressure. Regarding violation of Rules, the Election Commission has in its affidavit denied the same and claimed that the draft electoral rolls were duly supplied to the Secretary of the petitioner party and others. Public notices were also issued for inviting objections. The affidavit also details that claims of all for inclusion in the voters list were not accepted. In fact out of 8129 claims 5878 claims were accepted in form 6 and 131 objections out of 157 in form 7 were accepted and the rest were rejected. The reasons for increase in the number of voters/electors are attributed to the lowering of the voting age and not to any rigging of electoral rolls. Petitioner disputes this and calls the enquiry done as perfunctory and claims that bogus voters and non-residents were incorporated in the electoral roll. These are, at best, disputed questions of fact, which could perhaps, as admissible in law, be

tested in the post elections scenario. As regards Mr. Lekhi's submission that election in two Constituencies had been deferred on account of improper preparation of electoral rolls, it automatically follows that Andipatti Constituency was similarly affected though attractive on the first flush is not a tenable plea. The Election Commission in its affidavit has set out in detail the irregularities, which were found in the Saidapet and Vanniyampadi Constituencies. It would not follow automatically that the rolls for Andipatti Constituency were vitiated by the said irregularities. Rather, it can be taken as a demonstration of application of mind by the Election Commission is acknowledging its mistake in two Constituencies, where they existed and not for where they did not find the said aberration or irregularities. As regards the argument of the learned senior counsel for the petitioner that it is only the case of single by-election and it is not sought to be indefinitely postponed but deferred till the electoral rolls are again revised and the complaints resolved to the satisfaction of the petitioner and others. It may be that it is the case of only a single election and is not affecting the assembly seats all over the State. However what cannot also be ignored is that the democratic process, whether for the entire assembly or for a particular Constituency should not be thwarted or permitted to be derailed on the basis of what may be termed as political opportunism or expediency. It is very likely that different political parties, based on their assessment of their election prospects, may seek to either go through or defer the elections. For this purpose, resort could be had to institution of complaints and claims that electoral rolls were not properly prepared. Unless a clear strong case is made out, in which the Court comes to the conclusion that the exercise of power by the Election Commission was wholly arbitrary, mala fide and was operating in a manner to thwart the fair and free elections, the bar under Article 329 would apply and the party would have to seek its remedy after the election process is over and not in the intermediary stage.

30. In view¹ of the foregoing discussion, I am of the view that the present writ petition, though purported to be filed on the alleged ground of failure to discharge its Constitutional obligation, in fact and in substance seeks the relief of deferment of elections to Andipatti Constituency i.e. interference with election process, the writ petition would thus be hit by the bar under Article 329(b) of the Constitution of India. Besides, as discussed above, I am of the view that the petitioner, at this stage, in view of the Explanation given by the Election Commission has not been able to make out a case on the ground of failure to discharge its constitutional obligation by its alleged failure to ensure proper electoral rolls for the Constituency. The decisions of the Election Commission cannot be said to be arbitrary, mala fide or being in breach of law. No case for judicial intervention in accordance with the principles enumerated is made out. This is only on the prima facie of the matter and is not intended to be a determination on merits. It would be for the petitioner, if so chooses, to challenge the election in the post election scenario, by showing that the electoral rolls had been affected by bogus or ineligible voters and such inclusion had

materially affected the results of the election or on any other ground, as admissible at law. I cannot also lose sight of the decision of the Division Bench of Madras High Court, in whose territorial jurisdiction a cause of action arose, the similar challenge to the electoral rolls not being proper and seeking rectification of the same as well as deferment of the election has been dismissed by the Division Bench.

31. In view of the foregoing discussion, the writ petition is dismissed but with no order as to costs.