

(2008) 04 DEL CK 0196

In the Delhi High Court

Case No : Writ Petition (Civil) No. 170 of 2008

Shri Vinod Kumar Bakshi and Others

APPELLANT

Vs

Delhi Cantonment Board and Another

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Cantonments Act, 2006 — Section 17, 28, 28(2), 29, 30

Cantonments Board Rules — Rule 13(3)

Cantonments Electoral Rules, 2007 — Rule 10, 11, 12, 13, 13(3)

Citation : AIR 2008 Delhi 131 : (2008) 149 DLT 643

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : S.C. Singhal, for the Appellant; R. Narang, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—The petitioner in the instant case, are aggrieved by publication of Electoral Rolls for ward No. 3 of Delhi Cantt. on 2nd January, 2008 by the Chief Executive Officer of the Delhi Cantonment Board, and have assailed the action of the respondent No. 1 in causing to be published an electoral roll of the Delhi Cantonment Board under Rule 17 of the Cantonment Electoral Rolls. The petitioners are aggrieved by the order of the respondent No. 1 sustaining objections received by it and causing to be published an electoral roll after deleting the name of the petitioners. The petitioners have contended that they are residents of the premises bearing No. IV-73, Second Floor, Gopi Nagar of the Delhi Cantonment and were registered as electors in the electoral roll published by the respondent No. 1 for 15th September, 2006, at such address. Their names featured at Serial Nos. 2562, 2563, 2564 & 2565 in the electoral list for Delhi Cantonment published on 15th September, 2006 which is reproduced below:

Sl. No	Name of Elector	Age	Father/Husband name	Address
2562	Vinod Kumar			50 Tek Bahadur Bakshi House No. IV/1/73, Sham Singh Street, Gopinath
2563	Sashi Bakshi	45	Vinod Kumar Bakshi	House No. IV/1/73, Sham Singh Street,

Gopinath 2564 Nitin Bakshi 23 Vinod Kumar Bakshi House No. IV/1/73, Sham Singh Street, Gopinath 2565 Nidhi Bakshi 19 Vinod Kumar Bakshi

Again in the preliminary preparation of the electoral roll, name of the petitioners were incorporated in the draft electoral roll at Serial Nos. 590, 591, 592 & 593.

2. The respondent No. 2 preferred objections to the inclusion of the petitioner's in such rolls. Pursuant to the same, notices dated 6th December, 2007 were issued and were received by the petitioners for hearing of the objections to the inclusion of the petitioner's names in form -IV for a hearing which was to be conducted on 23rd December, 2007. The petitioner participated in the proceedings conducted by the Chief Executive Officer of the respondent No. 1 contending that the objection in form - IV were invalid, not legally tenable required to be rejected and the petitioners were entitled to be registered as electors. To evidence through residents proof, the petitioner placed documents including the driving license, pass book of the Punjab National Bank issued on 28th November, 2006; the identity card issued by the Election Commission of India, the ration card of the family dated 19th January, 2007; the election identity cards issued to the petitioner Nos. 2, 3 & 4 on 30th May, 2007 and the cooking gas connection dated 29th September, 2007 in the name of the petitioner No. 1.

3. Mr. Sashi Bakshi, who is the petitioner No. 2, is the wife of Shri Vinod Kumar Bakshi, who is the petitioner No. 1 and Shri Ditin Bakshi & Ms. Nidhi Bakshi, petitioner Nos. 3 & 4 are the son and daughters of the petitioner Nos. 1 & 2. Despite objections of the petitioners and the documentary evidence placed before the officials of the respondent No. 1, to support their residence at the above stated address for more than six months, the petitioners contend that the concerned officials were acting in a pre-determined and mala fide manner and have completely ignored the same.

4. Though the hearing which was fixed on 23rd December, 2007, no proceedings were recorded in any order passed in the presence of the petitioner. No decision by the President of the Delhi Cantonment Board was ever taken in the petitioner's presence. It is further submitted that no decision, if taken, was ever nor conveyed to them. The petitioners have complained that the objections were accepted by a simple direction deleting the names of the petitioners, thereby sustaining the objections raised by the respondent No. 2 This fact is stated to have come to the notice of the petitioners only at the final publication of the electoral roll in purported compliance of Rule 17 of the Cantonment Electoral Rolls, 2007.

In this view of the matter, the petitioners were constrained to file the present writ petition assailing the acceptance of the objections by the respondent No. 1 and the publication of the electoral roll without including the names of the petitioners.

5. The writ petition has been opposed by the respondent No. 1 contending that

the documents furnished by the petitioners did not establish residence at the given address for more than six months. Reference in this behalf is made in the counter affidavit to alleged lease deed purportedly entered by the petitioner No. 1 for taking on lease the property bearing No. IV/1/73, Gopinath Bazar, Ground Floor, Delhi wherein the petitioner No. 1 had reflected his address as that of a premises on the Pankha Road, New Delhi. According to the respondents, the petitioner is not residing but carrying on the business of sweets, snacks and catering at the Gopinath Bazar address wherein he has claimed his residential address and that the objections made by the respondent No. 2 have been validly sustained by the respondent No. 1 after due hearing in accordance with law.

6. I have heard learned Counsel for the parties at length and considered the material placed on record. The petitioner No. 1 has explained the reference to the Pankha Road premises in the counter affidavit. It has been explained that the Pankha Road premises is a family house of the petitioner No. 1 which was purchased by his father and that the same is occupied by his brother and sister. For this reason, the petitioner No. 1 has referred to the same as his address. The petitioner has reiterated his residence at Gopi Nath Bazar of Delhi Cantt. which is supported not only by the election card dated 30th March, 2007 issued on scrutiny and physical verification by the Election Commission of India to all the family members but also the family ration card dated 19th January, 2007 and the cooking gas connection which would support the residential occupation of this premises. In addition, the petitioner has placed a copy of the driving license as well before the respondent No. 1. No reference to this document is to be found in the counter affidavit filed by the respondents or in any document on record which would support the petitioner's contention that the respondents have failed to take into consideration material documents while passing the impugned order and taking the assailed action. The respondents have also ignored the petitioner's Explanation which cannot be held to be improbable or not plausible. Certainly, no efforts have been made to verify the correctness of the same.

7. The petitioner at the same time has assailed the action of the respondent No. 1 on a legal ground that the objectives of the respondent No. 2 were illegally untenable.

8. Consequently, a person who has resided in the cantonment ward for period of not less than six months immediately preceding the qualifying date, is entitled to be placed on the electoral roll. Such a person would be entitled not only to vote at the election for the Delhi Electoral Board but also to participate in the elections to be held to the Delhi Cantonment Board.

9. It has been pointed out that the population of the Delhi Cantonment Board exceeds 50,000 persons and consequently it is a category 1 cantonment.

10. Prior to coming into force of the Cantonment Act, 2006, the Delhi Cantonment Board was governed by the Cantonment Act, 1924 which provided for seven members on the Board. However, after the amendment of 2006, the

Cantonment Board comprised of eight elected members. As a result, the wards which constituted, the Boards were reconstituted and a fresh electoral roll was required to be prepared as per the provisions of the Cantonment Act and the Cantonment Electoral Rules framed there under.

11. So far as the eligibility conditions which are required to be satisfied to be placed as an electors on the electoral roll and the qualifications for being elected as member of the Board are concerned, the same are contained in Sections 28 & 29 of the Cantonment Act, 2006 which deserves to be considered in extenso and reads thus:

Section 28 - 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 sub-section.

(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 IXA of the Indian Penal Code:

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 29 - Qualification for being a member of the Board

(1) Save as hereinafter provided, every person, not being a person holding any

office of profit under the Government, whose name is entered on the electoral roll of a cantonment shall be qualified for election as a member of the Board in that cantonment.

(2) No person shall be qualified for nomination as a member of a Board if he is subject to any of the disqualifications specified in Sub-section (2) of Section 28.

(3) No person shall be qualified for being chosen whether by election or nomination as, and for being a member of a Board, if he:

(a) has been dismissed from the service of the Government and is debarred from re-employment therein, or is a dismissed employee of a Board;

(b) is debarred from practicing his profession or calling by order of any competent authority;

(c) holds any place of profit in the gift or at the disposal of the Board, or is a police officer, or is the servant or employer of a member of the Board; or

(d) is interested in a subsisting contract made with, or in work being done for, the Board except as a shareholder other than a director in an incorporated company; or

(e) is an officer or employee, permanent or temporary, of a Board or of any other local authority; or

(f) is a member of any other local authority; or

(g) has, by the authority referred to in Clause (f) of Section 31, been found to have been guilty of any of the corrupt practices specified in Sub-section (2) of Section 30 unless a period of five years has elapsed since the date of the decision of the authority; or

(h) fails to pay any arrears of any kind due by him otherwise than as an agent, receiver, trustee or an executor, to the Board within thirty days after the notice in this behalf has been served upon him; or

(i) is disqualified under any other provision of this Act:

Provided that a person shall not be deemed to have any interest in such a contract or work as is referred to in Clause (d) by reason only of his having a share or interest in:

(a) any lease or sale or purchase of immovable property or any agreement for the same; or

(b) any agreement for the loan of money or any security for the payment of money only; or

(c) any newspaper in which any advertisement relating to the affairs of the Board is inserted; or

(d) the sale to the Board of any articles in which he regularly trades or the purchase from the Board of any articles, to a value in either case not exceeding twenty-five thousand rupees in the aggregate in any year during the period of the contract or work.

12. There is no dispute that the names of the petitioners were included in the last electoral roll notified by the respondents. For this, the same ward or the documents relied upon by the petitioner.

13. The petitioner has assailed the orders passed by the respondent No. 1 and its actions relating to the maintainability of the objections which were filed by the respondent No. 2. It has been pointed out that the statutory provisions including the rules and regulations framed in the exercise of statutory powers have to be strictly construed and compliance thereto is required to be strictly made. The petitioners have contended that the objections which were filed by the respondent No. 2 failed to comply with the requirements stipulated under Rule 13(3) of the Cantonment Electoral Rules, 2007 and consequently required to be summarily rejected. The petitioner has assailed as completely illegal the action of the respondent No. 1 in entertaining the objections and proceeding in the matter as if valid objections have been made and also accepting the same.

14. My attention has been drawn to the manner in which the electoral rolls is required to be drawn up under the statutory rules. No person can be registered in the electoral rolls for more than one ward. By virtue of Rule 11, duty is cast on the Chief Executive Officer of the respondent No. 1 who is required to prepare an electoral roll by preparing a list of residents. After preparation of such a list, a public notice is required to be published informing about the preparation of the same to the public at large. Such exercise is to be completed in accordance with Rule 12 of the Rules which reads thus:

12(1) Notice of publication of electoral rolls - 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 published in Form II at the notice Board of the Board 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.

15. After preparation of such draft, list of residents, each individual electors whose name is registered as elector is entitled to get effected any correction in his name and address. Other electors are entitled object to the inclusion of any such member who is not qualified to be enrolled as an elector. Similarly, such persons whose name are not registered as electors, are entitled to get their names included after violating prescribed procedure.

16. Objections to the inclusion of the name on the electoral rolls are required to be made in accordance with the proceedings and Rule 13. Rule 13(3) provides the manner in which the objection is to be made and reads thus:

13(3). Every objection to the inclusion of a name in the roll shall be -

(a) in Form IV.

(b) Prepared 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 appear.

Rule 13. Claims and objections-

(4) Every objection to the inclusion of a name 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.

17. In addition to the right given to any person who is objecting to the inclusion of the name of any other person on the rolls, power is vested on the Chief Executive Officer to suo motu reject any claim or objection under Rule 13(7) of Cantonment Electoral Rules, 2006.

18. So far as the procedure to be followed in respect of any claim by any person for inclusion and any objection to the inclusion of any person is concerned, the manner in which the same is to be dealt with is prescribed under the Rules 15 & 16 which also deserves to be considered in extenso and reads thus:

15. Publication of list of claims and objections and time and place of their hearing - (1) A list of all claims and objections not disposed of under Sub-rule (7) of Rule 13 or under Rule 14 shall be published in Form V in the same manner as notice in Rule 12 not later than three days after the last day fixed for receipt of claims and objections.

(2) The list shall give intimation of the time and place of the hearing of such claims or objections.

(3) The place of hearing will ordinarily be Cantonment Board Office and the date of hearing shall be not earlier than fifteen and not later than thirty days of the date of publication under this sub-rule.

(4) At the same time, as action under Sub-rule (1) of the rule is taken, notice of hearing together with a copy of the objections shall be sent to all persons who are the subject of objections except where the objector is himself the subject.

(5) Notices may be served through the Cantonment Board Staff as ordinarily employed for that purpose, or by registered post, to the place of residence or business of the individual as the case may be, and shall be deemed sufficiently served if left at such place of residence or business, or duly posted as the case may be.

16. Hearing of claims and objections and issue of orders thereon - (1) The President or some other person not being an elected member, the Chief Executive Officer or a servant of the Board nominated by him shall hear all claims and objections published under Rule 15 or the subject of corrections under Rule 14.

(2) Evidence, documentary or oral, may be adduced in respect of any claim or objection, subject to its being produced on the date of hearing fixed under Rule 15.

(3) Appearance by legal practitioner shall not be allowed.

(4) The President or his nominee, after hearing the party or parties to a claim or objection taking such evidence as may be produced in respect thereof, and making such other enquiry as appears to him necessary, shall pass order in writing thereon, stating as briefly as possible the reasons for his decision; and such orders shall be final, when passed by the President, but subject to the result of an appeal, if any, made within two days to the President when passed by his nominee.

19. It is only after considering the matters in compliance with Rule 15 and after passing the orders in compliance with Rule 16 that the Chief Executive Officer is statutorily mandated u/s 17 to prepare by printing or otherwise, the correct electoral rolls in English and in the "Indian" in language of the district as may be reasonably necessary. In addition, a copy of the corrected electoral rolls is required to be pasted on the cantonment board office and notice thereof is required to be published throughout cantonment in the same manner as under Rule 12 on the 15th of September of each year.

20. In case the electoral roll is not prepared or otherwise published on such dates as are satisfied in Rule 10 or 17(1), the Central Government may direct the Board or where a Board is not constituted, the officer managing the station, to have the electoral roll prepared or finally published on such date as may be specified in the order. Rule 19 enables the President upon being satisfied that the applicant is entitled to be registered on the roll, to direct the Chief Executive Officer to include the name of any person who has been wrongly left out from the electoral rolls.

21. The petitioner has objected that the respondents did not comply with the

requirement of Rule 13(3).

As per Rule 13(3), the objections are required to be prepared only by a person whose name is already included in the electoral roll and counter signed by any person whose name is already included in that part of the roll in which the name objected, to appears. Rule 13(3) also specifies that any objection which is not made within the period specified or in the form and manner specified in the roll, is mandatorily required to be rejected by the Chief Executive Officer.

22. In the instant case, the respondent No. 1 has placed copy of the objections which were filed by Shri Gyaneshwar, respondent No. 2 herein, which had not been counter signed by any other person.

As per the statutory mandate, such objections could not have been entertained by the respondent and in compliance of the mandate of Rule 13(7), the Chief Executive Officer was required to reject the same has not been in the form and manner statutorily specified under Rule 13(3).

23. It is noteworthy that no waiver is provided to the compliance with the statutory mandate nor any exemption thereto permissible. As such, the respondent No. 1 or its officer illegally exercisable no discretion in the matter so far as Rule 13(7) is concerned.

For all these reasons, the objections which were filed by the respondent No. 2, were not legally tenable and required to be rejected in view of Rule 13(3) of the Cantonment Board Rules.

24. Mr. S.C. Singhal, learned Counsel for the petitioner, has further pointed out that as per the objections to inclusion of the petitioner's name placed by the respondents, no reasonings were given by the President for sustaining the objections. On record in the present case, the respondent No. 1 has failed to record any reasons for sustaining the objections made by the respondent No. 2. There is substance in this contention inasmuch as the application form contained a column wherein the officer considering the objection is required to set out the ground on which the same is being sustained. The president of the respondent No. 1 has failed to record any reason or ground for sustaining an objection.

25. It is well settled that the respondents cannot support or justify their action by orders by stating reasons in the counter affidavit which may be filed to any proceedings wherein a challenge has been laid to orders passed by the authority. The action taken in sustaining the objections filed by the respondent No. 2 and directing deletion of the name of the petitioner from the electoral list is not sustainable for this reason as well.

26. For all these forgoing reasons, the present writ petition deserves to be allowed.

The orders of the respondent No. 1 accepting the objections filed by the respondent No. 2 to the inclusion of the petitioners' name and consequently

directing the deletion of the petitioner's name from the electoral roll of the Delhi Cantonment are hereby set aside and quashed. As a consequence, the respondents are directed to effect the necessary additions and to include the names of the petitioner Nos. 1 to 4.

dusty to parties.