

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR**

WRIT PETITION No.28593 of 2023

ORDER: (per the Hon'ble the Chief Justice Alok Aradhe)

Mr. Zulfaquar Alam, learned counsel appears for the petitioner.

Mr. Avinash Desai, learned Senior Counsel represents Ms. Divya Adepu, learned Standing Counsel for Election Commission of India appears for respondent No.1.

Mr. K. Siddharth Rao, learned Standing Counsel for Greater Hyderabad Municipal Corporation (GHMC) appears for respondent Nos.3 to 5.

2. The petitioner had contested the Lok Sabha elections in 2019 from Hyderabad Lok Sabha Seat on Indian National Congress Ticket. The petitioner has also contested the elections three times from Nampally Assembly Constituency in the State of Telangana and has lost the elections. The grievance of the petitioner as pleaded in the Writ Petition is that the electoral roll of Nampally Assembly Constituency

contains the names of bogus voters, dead persons and persons, who are having their names in two constituencies and who are already shifted from Nampally Constituency.

3. The petitioner in this writ petition seeks a writ of mandamus directing the respondents to undertake a special revision of electoral rolls to delete/remove the names of bogus, shifted, duplicate and the persons, who are already dead, from the electoral roll of Nampally Assembly Constituency.

4. Learned counsel for the petitioner has invited the attention of this Court to Section 21(3) of the Representation of the People Act, 1950 (hereinafter referred to as 'the 1950 Act') and has submitted that the Election Commission may at any time, for reasons to be recorded, direct a special revision of electoral roll for any constituency or part of a constituency in such manner as it may think fit. It is also pointed out that the electoral roll of Nampally Constituency contains the names of 10473 voters, who have already died. It is also pointed out that the electoral roll contains the names of bogus voters to the extent of 34867. It is also pointed out that the electoral roll

contains the names of 45567 voters, who are already shifted from Nampally Assembly Constituency. It is argued that the electoral roll in all consists of the names of 113310 voters, whose names are liable to deleted there from. It is therefore submitted that the Electoral Registration Officer be directed to undertake a special revision of the electoral roll of Nampally Assembly Constituency.

5. On the other hand, learned Senior Counsel for the Election Commission of India who has appeared on advance notice submits that the Election Commission of India is duty-bound to ensure free and fair elections. It is submitted that in exercise of powers under Section 21(2)(a) of the 1950 Act, the Electoral Registration Officer has already initiated the work of revision of electoral rolls. It is submitted that on 21.08.2023, the draft electoral roll was published and the objections of the draft electoral roll could have been filed between 21.08.2023 to 19.09.2023. It is further submitted that on 28.09.2023, the claims and objections have been decided and thereafter, the final electoral roll has been published on

04.10.2023. It is also submitted that the petitioner is at liberty to approach the Electoral Registration Officer under Sections 22 and 23 of the 1950 Act seeking correction of entries and amendment, transposition or deletion of entries in the electoral rolls. It is submitted that in case such an objection is filed in the prescribed time limit, the Electoral Registration Officer shall consider the same in accordance with law.

6. We have considered the rival submissions made on both sides and have perused the record.

7. Before proceeding further, it is apposite to take note of Sections 21, 22 and 23 of the 1950 Act and the same are quoted below:

21. Preparation and revision of electoral rolls. — (1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

(2) The said electoral roll—

(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date—

(i) before each general election to the House of the People or to the Legislative Assembly of a State; and

(ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency and

(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election

Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit:

Provided that subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

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:

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.]

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:

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 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.

8. From perusal of the aforesaid provisions, it is evident that Section 21 deals with preparation and revision of electoral rolls. Section 21(2)(a) provides for that the electoral roll shall unless otherwise directed by the Election Commission for reasons to be recorded in writing be revised in the prescribed manner by reference to the qualifying date before each general election to the House of the People or to the Legislative Assembly of the State.

The proviso to sub-section (2) of Section 21 of the 1950 Act provides that if electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not be affected thereby.

Sub-section (3) of Section 21 of the 1950 Act confers powers on the Election Commission to direct a special revision of the electoral roll for any constituency or part of a constituency for reasons to be recorded in such manner as it may think fit.

9. Section 22 of the 1950 Act deals with correction of entries made in electoral rolls.

The aforesaid provision empowers the Electoral Registration Officer for a constituency either on an application being made to him or on his own motion, after conducting such enquiry as he thinks fit, direct deletion of an entry made in the electoral roll on the ground that a person is either dead or has ceased to be ordinarily resident of constituency or otherwise is not entitled to be registered in that electoral roll.

10. Section 23(1) of the 1950 Act provides for amendment. A person whose name is not included in the electoral roll of a constituency may apply to the Electoral Registration Officer for inclusion of his name in that electoral roll.

Sub-section (3) of Section 23 of the 1950 Act provides for no amendment, transposition or deletion of any entry shall be made under Section 22 and no direction for inclusion of the name in the electoral roll of a constituency shall be given under this Section after the last date of making the

nominations for election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.

11. In exercise of powers under Section 21(2)(a) of the 1950 Act, the Electoral Registration Officer has already undertaken the work of revision of the electoral roll and the revised electoral roll has been published on 04.10.2023. The validity of the aforesaid revised electoral roll has not been assailed by the petitioner in this petition. Even otherwise, the validity of the aforesaid revised electoral roll cannot be examined in a proceeding under Article 226 of the Constitution of India. It is pertinent to note that the persons aggrieved by the final publication of the electoral roll have the remedy either under Section 22 or under Section 23 of the 1950 Act to seek amendment, transposition or deletion of any entry.

12. Therefore, no case for invocation of powers under Section 21(3) of the 1950 Act is made out as the aforesaid power has to be exercised by the Election Commission for reasons to be recorded.

13. After final publication of the electoral roll on 04.10.2023 under Section 21(2)(a) of the Act, the petitioner has not approached the Electoral Registration Officer seeking a direction to invoke powers under Section 21(3) of the 1950 Act.

14. For the aforementioned reasons, no case for interference is made out. However, needless to state that in case an aggrieved person approaches the Electoral Registration Officer either under Section 22 or under Section 23 of the 1950 Act, such a petition shall be dealt with in accordance with law.

15. With the aforesaid directions, the petition stands disposed of.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

ALOK ARADHE, CJ

N.V.SHRAVAN KUMAR, J

12th OCTOBER, 2023.

Note: issue certified copy today.

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