

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 31.10.2013

+ WP(C) No.5064 of 2013 & CM No.11421/2013

RAM NARESH TYAGI & ORS

..... Petitioner

Through: Mr. Jagjit Singh and Mr. Rahul
Chopra, Advs.

versus

ELECTION COMMISSION OF INDIA & ANR

..... Respondent

Through: Mr. P.R. Chopra, Adv. for R-1
Mr. Anjum Javed and Mr. R.D.
Dhiraj, Adv. For R-2

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The petitioners before this Court are aggrieved from deletion of their names from the electoral roll of the constituencies in which they claim to be residing. According to the petitioners, in the first week of March, 2009, they came to know of deletion of their names from the electoral roll. One of the voters of the locality namely Mr. Arun Tyagi approached this Court by filing a writ petition being W.P(C) No.7967/2009, *inter alia*, seeking reinstatement of his name as well as the names of other voters who had been subjected to similar treatment. The aforesaid writ petition was disposed of with liberty to Mr. Arun Tyagi to file an appeal under Section 24 of the Representation of Peoples Act. The appeal filed by him was dismissed on 25.9.2009. The order, dismissing the appeal, was assailed by Mr. Arun Tyagi

by way of a writ petition being W.P(C) No.13779/2009 which came to be disposed of vide order dated 26.10.2010, whereby the writ petition was dismissed. Mr. Arun Tyagi challenged the order of dismissal of the writ petition by way of an LPA No.2/2011 titled Arun Tyagi Vs. Election Commission of India & Anr. which was allowed by this Court vide an order dated 4.4.2011. Pursuant to the order of the Division Bench, the name of Mr. Arun Tyagi was included in the electoral roll. The petitioners are now seeking restoration of their names in the electoral roll.

2. No counter affidavit has been filed by the respondents, but it is not disputed that no hearing in terms of the provisions of Section 22-C of the Representation of People's Act was given to the petitioners before deleting their names from the electoral roll. The learned counsel for respondent no.1, however, informs that the name of Mr. Arun Tyagi was also deleted from the electoral roll after giving an opportunity of hearing to him in terms of the order of the Division Bench in LPA No.2/2011, since it was found that the area in which he was living fell in the State of Uttar Pradesh and not in Delhi.

3. Section 22 of Representation of People's Act reads as under:

“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.]”

4. It would thus be evident from a perusal of the aforesaid provisions that the names of a voter from the electoral roll can be deleted only after giving a reasonable hearing to the voter whose name is sought to be deleted from the said roll. Even if the information received by the concerned Electoral Registration Officer indicates that a particular voter is not residing in the constituency to which electoral roll pertains, must necessarily he be given an opportunity of hearing to such a voter, so as to enable him to appear before him and satisfy him that he continues to reside in the said constituency and, therefore, his name should not be deleted from the electoral roll.

5. The following view taken by the Division Bench in Arun Tyagi (supra) is relevant in this regard:

“22. From the aforesaid enunciation of law, the principles that are culled out are that non-compliance of the principles of natural justice vitiates the decision; that it is a common experience that once a decision has been taken there is a tendency to uphold it; that unless the statute or a rule excludes the application of natural justice the same should be adhered to; that a person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing; that the doctrine of audi alteram partem is not founded on a straitjacket formula and it can be modified in the

exigencies of the situation; that the doctrine of post-decisional hearing can be invoked if a danger or a different situation is required to be avoided; that a higher forum in certain circumstances can afford adequate opportunity of hearing though in all cases post-decisional hearing cannot be substituted for pre-decisional hearing; that the hard realities of life are to be borne in mind and it would depend upon the facts of the case; that the factum of prejudice that has been caused is a factor to be taken note of; that there has to be a pragmatic approach; and that sometimes the court may not interfere and direct for a post-decisional hearing.

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30. The relief of enrolment or striking out of the name of a person enrolled therein on the ground of his lacking in qualifications conferring a right to be enrolled must be adjudicated in the manner prescribed by the 1950 Act invoking the jurisdiction of the authorities contemplated therein. We may hasten to add that in the said case, the inclusion of a person or persons in the electoral roll by the authority empowered in law to prepare the electoral roll, though they are not qualified to be so enrolled, cannot be a ground for setting aside the election of a returned candidate but the fact remains that emphasis has been laid on the issue of enrolment and preparation of electoral roll of any constituency and the obligations of an authority. If these aspects are appreciated in a cumulative manner, we are of the considered opinion that there has to be strict compliance of Section 22 of the 1950 Act as the same takes away the substantial right of a voter. The deletion or inclusion may not be a ground to set aside the election but the competent authority under the Act cannot be granted leverage to proceed in an arbitrary manner without complying with the proviso to Section 22(c). It has a statutory function to carry out and must understand the purity of such a procedural aspect. Thus, adherence to the same, we are inclined to think, is a must. The provision clearly lays a postulate that the person concerned has to be afforded reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him by the electoral registration officer. Therefore, the doctrine of post-decisional hearing or hearing at the stage of appeal would not meet the statutory requirement. Judged from both the angles, the order is unsustainable. The deletion is unsustainable because of procedural non-compliance. As has been held by the Lordships in the authorities which we have referred hereinbefore, the principles of natural justice may not be put in a straitjacket formula and it may vary from statute to statute, situation to situation and case

to case. In our view, when there is a deletion under Section 22 in the context of the statutory provision, considering the extent of repercussion it can have in a democratic setup and its effect on the right of a citizen to vote, pre-decisional hearing is imperative.”

6. A perusal of the order dated 25.9.2009 passed on the appeal of Mr. Arun Tyagi made under Section 24 of the Representation of People Act, 1950 would show that he was seeking restoration of not only his name but also names of 841 other voters to the electoral roll. Considering that Mr. Arun Tyagi was not only agitating his cause but also cause of present petitioners as well, the petitioners cannot be accused of inaction or delay in approaching the Court. They could be under a bonafide impression that in the event plea of Mr. Arun Tyagi being allowed, not only his name but also their names shall be restored on the electoral roll. Considering that on account of deletion of their names from the electoral roll, the petitioners are deprived of a highly valuable right to cast their votes in the elections, I am not inclined to reject the plea of the petitioners on the ground that they did not approach the court immediately on coming to know that their names had been deleted from the electoral roll.

7. For the reasons stated hereinabove, the impugned orders, deleting the names of the petitioners from the electoral roll of the Constituency Noi.68, Gukul Pur, Delhi is hereby quashed. It is made clear that the Electoral Registration Officer shall be at liberty to pass an appropriate fresh order after giving an opportunity of hearing to the petitioners in terms of provisions of Section 22-C of Representation of People Act, 1950.

The writ petition stands disposed of in terms of this order.

There shall be no orders as to costs.

OCTOBER 31, 2013/*rd*

V.K. JAIN, J.