

PETITIONER:
ELECTION COMMISSION OF INDIA & ANR.

Vs.

RESPONDENT:
DR. MANMOHAN SINGH & ORS.

DATE OF JUDGMENT: 01/12/1999

BENCH:
S.P.Bharucha, R.C.Lahoti, N.Santosh Hegde,

JUDGMENT:

BHARUCHA, J.

This appeal is filed by the Election Commission of India, by special leave, against the judgment and order of a learned Single Judge of the Gauhati High Court on a writ petition filed by the first respondent.

The first respondent was registered as an elector in the New Delhi Parliamentary Constituency when, on 21st June, 1991, he became a Minister in the Union Cabinet. By reason of the provisions of Article 75 (5) of the Constitution, it was requisite that he be elected to either House of Parliament within six months.

On 27th August, 1991 the first respondent preferred a claim in Form No.6 prescribed under Rule 26 of the Registration of Electors Rules, 1960 for inclusion of his name in the electoral roll of 52-Dispur Legislative Assembly Constituency in the State of Assam (the said constituency) stating that his place of residence was c/o Dr. Hema Prabha Saikia, Ward No.34, Sarumataria Hill, P.O. Assam Sachivalaya, Dispur. He stated therein, My name may have been included in the electoral roll in U.T. Delhi State in which I was ordinarily resident earlier at the address mentioned below and, if so, I request that the same may be excluded from that electoral roll. The third respondent, the concerned Electoral Registration Officer, directed that the claim be posted on the notice board of his office, inviting objections within seven days. On 11th September, 1991 the first respondents name was registered in the said constituency. On 26th September, 1991 the first respondent was elected to the Rajya Sabha from the State of Assam. On 29th September, 1991 his name was deleted from the Delhi electoral roll.

On 29th September, 1992 the appellant forwarded to the first respondent Form No.1, applicable to the holder of a declared office, for his statement as to the place of his ordinary residence. On 7th June, 1993 the first respondent filed that form stating that, but for his holding the office of a Union Cabinet Minister, he would have been ordinarily resident at the aforementioned address in the area of the said constituency. On 3rd September, 1993 the first respondent was called upon to furnish evidence in support of the said statement about his ordinary residence. On 18th

September, 1993 the third respondent informed the first respondent that it has been decided to include his name on the rolls of the said constituency.

On 22nd and 28th December, 1993 the appellant wrote to the Chief Electoral Officers of all States and Union Territories about the malpractice of registering persons on the electoral rolls of States and Union Territories where they were not ordinary resident, and instructed them to look into the matter.

Pursuant to such instruction, the third respondent wrote to the first respondent on 2nd February, 1994, thus:

Whereas the Election Commission has cast doubt on your declaration of ordinary residence in /S 75, of 52 Dispur LAC. I am to request you to kindly furnish evidence in support of your claim of ordinary residence as stated in Form No.1 earlier submitted. (Emphasis supplied)

This was followed by another communication on 16th February, 1994. On 18th and 22nd February, 1994 the first respondents Private Secretary sought time to reply.

On 1st March, 1994 the then Chief Election Commissioner passed an order with specific reference to the first respondent. He referred to the facts and to investigations in his case in some detail. He then stated:

40. From the facts set out above the following inferences would seem to arise :-

(a) That when on 29.8.1991 Shri Manmohan Singh filed his claim application for being included in the electoral rolls of 52-Dispur Assembly Constituency in the State of Assam he knew that he was registered as an elector in Delhi being an ordinarily resident of Delhi and not of Assam. The address c/o Dr. Hem Prabha Saikia, wife of the Chief Minister of Assam, was acquired only with a view to getting registered as an elector in Assam.

(b) That the declaration under Form 1 under rule 7 of the Registration of Electors Rule, 1960 read with Section 20(4) of the Representation of the People Act, 1950, filed by Dr. Manmohan Singh during the intensive revision of rolls in 1993 did not get established on cross checking.

(c) The very text of the order passed by the ERO for including his name in the electoral rolls during 1993 shows that it was an order passed under duress from his superior officers who had no jurisdiction in this statutory matter.

(d) That the Returning Officer who conducted the election of Shri Manmohan Singh to the Council of State on 26.9.1991 was guided by entry of the name of Shri Manmohan Singh in the electoral roll and therefore could not have entertained any challenge against the validity of the election on the basis of illegality committed during the registration of Shri Manmohan Singh as an elector.

(e) That while filing the claim petition in Form 6 under Rule 13(1) and Rule 26(1) of the Registration of electors Rules, 1960 on 29.8.1991 and Form 1 under Rule 7 of

the Registration of Electors Rules, 1960 read with Section 20(4) of the Representation of the People Act, 1950, Shri Manmohan Singh and his supporter Shri Narain Chandra Kakoti both committed the offence of wilfully making declaration which they could not have believed to be true to their own knowledge. Such declaration would attract the penal provisions of section 31 of the Representation of the People Act, 1950.

(f) That District Election Officer of Guwahati and the Chief Electoral Officer of the State of Assam have clearly gone beyond their jurisdiction by directing the inclusion of the name of Shri Manmohan Singh in the electoral rolls of 52-Dispur AC.

41. In the above circumstances the Commission, in exercise of the powers, inter alia of superintendence, direction and control of the preparation of electoral rolls, vested in it by virtue of Article 324 of the Constitution, the powers to issue specific or general directions under section 22 of the Representation of the People Act, 1950 and all other powers enabling it in this behalf, directs as follows:

(a) That the Electoral Registration Officer of 52-Dispur Assembly Constituency should expedite the enquiry initiated by him with his notice No.DC(ELE)48/93/152(A) dated the 2nd February, 1994. Such enquiry should be completed as expeditiously as possible and every effort should be made by the ERO to conclude it by the 31st March, 1994.

(b) While conducting the above enquiry and passing the final order, the ERO should keep in view and pay due regard to the facts brought out in the foregoing paragraphs of this order.

(c) If the ERO ultimately comes to the decision that Shri Manmohan Singh and/or Shri Narain Chandra Kakoti made a wilfully false declaration for getting the name of the former registered as an elector in Assam in 1991 and/or 1993, he should initiate necessary legal proceedings before the competent court of law against the aforesaid person(s) under section 31 of the Representation of the People Act, 1950 forthwith.

42. The Commission is examining all the facts and intends to take further legal action.

On 3rd March, 1994 the first respondent filed his reply before the third respondent. By an order of the third respondent of the same date, further evidence was called for. On 16th March, 1994 the first respondent questioned the correctness of the enquiry pertaining to his being an ordinary resident in the area of the said constituency by filing the writ petition upon which the order under appeal was passed.

The writ petition was allowed in part by the High Court, holding thus:

87. Accordingly, this writ application is disposed of holding as follows:

i) That the ordinary resident in a constituency as mentioned in the Representation of the People Act, 1950 shall mean a habitual resident of that place or a resident as a matter of fact in regular, normal or usual course. It means an usual and normal resident of that place. The residence must be permanent in character and not temporary or casual. It must be as above for a considerable time, he must have the intention to dwell permanently. He must have a settled abode at that place for a considerable length of time for which a reasonable man will accept him as the resident of that state.

ii) A person holding a declared office as provided by the Act of 1950 can file a declaration in Form No.6 and such a declaration shall have to be accepted as correct and the burden does not lie on such a person to produce evidence to the contrary; that burden lies on the authority who disputes it, regarding holding of declared office.

iii) Apart from enquiry regarding holding a declared office, such a declaration made by the holder of declared office cannot be subjected to any enquiry as the statute by creating a deeming provision/fiction has given that privilege/right to the holder of a declared office to make declaration regarding "ordinary residence of a place and that must be deemed to be final.

iv) The orders dated 1.3.94 (Annexure-J), notice dated 2.2.94 and 16.2.94 (Annexure-D and F) and the order dated 3.3.94 (Annexure-I) shall stand quashed being without authority of law and having been issued without jurisdiction, and in violation of laws as indicated above.

The appellant accepts the correctness of the finding of the High Court in regard to the meaning of the words ordinary resident. It questions the correctness of its finding in regard to the effect of a declaration of the place of his ordinary residence by a person holding a declared office and, consequently, the quashing of the orders dated 1st March and 3rd March, 1994 and notices dated 2nd February and 16th February, 1994.

Section 20 of the Representation of the People Act, 1950 defines ordinarily resident. Sub-sections (4), (5) and (7) thereof are relevant here; they read thus :

(4) Any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which the provisions of this sub-section apply, shall be deemed to be ordinarily resident on any date in the constituency in which, but for the holding of any such office, he would have been ordinarily resident on that date.

(5) The statement of any such person as is referred to in sub-section (3) or sub-section (4) made in the prescribed form and verified in the prescribed manner, that

but for his having the service qualification or but for his holding any such office as is referred to in sub-section (4) he would have been ordinarily resident in a specified place on any date, shall, in the absence of evidence to the contrary be accepted as correct.

(7) If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made in this behalf by the Central Government in consultation with the Election Commission.

That the first respondent was at the relevant time a person holding an office to which the provisions of these sub-sections applied is not in dispute.

Rule 7 of the Registration of Electors Rules, 1960 states :

7. Statement under section 20 (1) Every person who holds a declared office or has a service qualification and desires to be registered in the roll for the constituency in which, but for holding such office or having such qualification, he would have been ordinarily resident, shall submit to the registration officer of the constituency, a statement in such one of the Forms 1, 2, 2A and 3 as may be appropriate.

(2) Every statement submitted under sub- rule (1) shall be verified in the manner specified in the Form.

(3) Every such statement shall cease to be valid when the person making it ceases to hold a declared office or, as the case may be, have a service qualification.

By reason of sub-section (4) of Section 20 aforequoted, a person who holds a declared office is deemed by law to be, on any date, an ordinary resident of a constituency in which he would ordinarily have resided but for the fact that he holds such declared office. For this purpose, by reason of sub-section (5) of Section 20, the statement of the holder of the declared office, made in the form and verified as required, must be accepted as correct in the absence of evidence to the contrary. Where the question of such a persons ordinary residence does arise, it has, by reason of sub- section (7) of Section 20, to be decided by reference to the facts of the case. (The sub-section speaks of rules in this behalf but none have been framed.)

It is, therefore, clear that the statement of the holder of a declared office is not always to be accepted as correct. It can be questioned, but only if the Electoral Registration Officer has evidence to the contrary.

Therefore, to question the correctness of the statement as to his ordinary residence made by the holder of a declared office, the Electoral Registration Officer must

be in possession of evidence to the contrary. That is a pre-requisite for the non-acceptance of the statement of the holder of a declared office. If the Electoral Registration Officer has such evidence, he must inform the holder of a declared office accordingly, and state the substance of such evidence so that the holder of the declared office may rebut it in the course of the enquiry on facts that must follow. The enquiry has to be decided on the facts of the case; its quasi-judicial character is clear.

The question, then, is whether the enquiry against the first respondent can be proceeded with. It will be seen that the enquiry was opened by the letter of the third respondent dated 2nd June, 1994 whereby the first respondent was asked to furnish evidence in support of his claim of ordinary residence as stated in Form No.1. Form No. 1 relates to the declaration of his ordinary residence by a person holding a declared office. The claim in Form No.1 was filed by the first respondent on 7th June, 1993 when he was already a Cabinet Minister and thus the holder of a declared office. His statement therein could, having regard to the true interpretation of Section 20, sub-sections (4) and (5), have been questioned by the third respondent only if the third respondent was possessed of evidence to the contrary and the third respondent had intimated to the first respondent that fact and the substance of such evidence. There is nothing to indicate that the third respondent had any evidence to the contrary, and he certainly did not so state in his letter dated 2nd June, 1994. In fact, he called upon the first respondent to adduce his evidence. The first respondents statement in Form No.1 could not, therefore, have been questioned and the enquiry in this behalf is bad in law. It was contended on behalf of the appellant that the order of the Chief Election Commissioner dated 1st March, 1994 and the notices subsequent thereto showed that the enquiry also related to the statement of the first respondent about the place of his ordinary residence in Form No. 6, that is to say, when he was not the holder of a declared office, and therefore, the enquiry should be allowed to proceed. In the first place, the enquiry commenced with the third respondents letter dated 2nd February, 1994 whereby the first respondent was asked to furnish evidence in support of your claim of ordinary residence as stated in Form No. 1, that is to say, in support of the statement made by the first respondent as the holder of a 'declared office. In the second place, and in any event, the enquiry cannot be allowed to proceed having regard to the order of the then Chief Election Commissioner dated 1st March, 1994. The order referred to the findings of investigations that had been carried on, of which the first respondent had had no notice. It drew inferences therefrom that were very adverse to the first respondent. It then directed the third respondent to keep in view and pay due regard to the facts brought out in the foregoing paragraphs of this order while conducting the enquiry and passing the final order thereon. Having regard to the fact that the third respondent was a subordinate of the then Chief Election Commissioner and, given the nature of the inferences drawn by the latter without giving to the first respondent the opportunity of a defence, there can be no doubt that allowing the enquiry to proceed would be detrimental to fair play and the interests of the first respondent. The enquiry and all notices and orders pertaining thereto must stand quashed.

It shall be permissible for the appellant, if so advised, to issue to the first respondent, now that he is no longer the holder of a declared office, a notice for correcting the electoral roll upon which the entry in regard to the first respondents ordinary residence in the said constituency was made. It shall be open to the first respondent to raise all available pleas in reply. The decision in the matter of such enquiry shall be taken without reference to the observations of the then Chief Election Commissioner in the order dated 1st March, 1994. The appeal fails and is dismissed. There shall be no order as to costs. T.P. (C) Nos. 79-81 of 1995 The matters in regard to which the Transfer Petitions are filed need not now be transferred to this Court. They shall be decided by the concerned High Courts in accordance with the law laid down in the above judgment. The Transfer Petitions are disposed of accordingly.