

PETITIONER:
RAM DEO BHANDARI & OTHERS

Vs.

RESPONDENT:
ELECTION COMMISSION OF INDIA & OTHERS

DATE OF JUDGMENT 17/01/1995

BENCH:
AHMADI A.M. (CJ)
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AHMADI A.M. (CJ)
BHARUCHA S.P. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1995 AIR 852 1995 SCC (2) 153
JT 1995 (1) 671 1995 SCALE (1) 178

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. Article 168 of the Constitution provides that every State shall have a Legislature and Article 172(1) provides that every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and expiration of the said period of five years shall operate as a dissolution of the Assembly. Under this Article the five year term of the Legislative Assemblies of two States, namely, the States of Bihar and Orissa will expire on March 15, 1995. It is obvious that on expiration of the said term the assemblies of the said two States will stand dissolved. To satisfy the mandate of Article 168 it is necessary that elections should be held in the aforesaid two States in a manner that the election results are declared for March 15, 1995. The latest Press Note issued by the Election Commission on December 8, 1994 states that the elections in the States of Bihar and Orissa would be completed before March 10, 1995. Ordinarily no objection can be raised by either of the States to the schedule of elections fixed with a view to completing the same before March 15, 1995.

2. However, in paragraph 06 of the said Press Note it is ordained :

"A poll in any of these States will not be taken without the supply of electoral identity cards to all eligible electors. The State Government will be called upon to furnish a certificate that photo identity cards have been supplied to all eligible electors. "

On a plain reading of the said paragraph it is clear that unless 'all' eligible electors are supplied electoral identity cards and a certificate to that effect is not furnished by the concerned State Government no poll will be taken in that State. It is, therefore, apprehended by the

petitioners of writ petitions Nos. 2 and 6 of 1995 which concern the States of Bihar and Orissa that since the said two States are not in a position to complete the requirement of supplying photo identity cards to 'all' eligible electors before the last date fixed for the same, elections may not be taken in the said two States thereby denying to the electors thereof their constitutional right to elect a new assembly for their respective States. The petitioners contend that

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that would tantamount to the eligible electors of the State being denied their constitutional and democratic right to elect a new assembly. This apprehension arises in the background of the following events.

3. On August 28, 1993, the Election Commission in purported exercise of powers under Rule 28 of the Registration of Electoral Rules, 1960 read with Section 130(2) of the Representation of Peoples Act 1950, read with Section 130 (2) of the Representation of People's Act, issued a directive for the supply of photo identity cards to electors in the assembly as well as parliamentary constituencies in each State, with a view to prevent impersonation of electors and facilitating their identification at the polls. It was also made clear in no uncertain terms that no polling at elections for which the Election Commission is responsible shall take place after January 1, 1995 unless 'all' eligible electors have been supplied with identity cards. What features the identity cards shall bear was also indicated with a caution that 'there will be no departure from these features in any manner whatsoever.' This was followed by High Level Meetings at which certain State Governments, including the representatives of the said two States of Bihar and Orissa, pointed out certain difficulties in the implementation of the said directive. The Chief Election Officers of the States were held responsible for maintaining the schedule for completion of the identity cards to the electors before deadline fixed by the Election Commission. On May 11, 1994, the Election Commission wrote to the Chief Secretary and Chief Election Officer, Bihar that there was virtually no progress made towards issuance of identity cards and added 'the commission hereby forewarns you that the responsibility for any constitutional stalemate that may arise because of your failure to comply with the instructions of the commission..... will rest squarely with you and the State Government.' This was followed by a letter dated November 6, 1994 drawing the attention of the State of Bihar that the progress was very unsatisfactory and warned that should any constitutional crisis arise on account of elections not being held for want of identity cards, the responsibility will rest squarely on the State Government. Then by the letter of December 29, 1994, the Election Commission stated that the notification calling the elections would be issued only after the receipt of the certificate from officers of the State Government that all eligible voters had been supplied with photo identity cards. By the order of November 30, 1994, the Election Commission stated that in no case will any request for extension of deadline be entertained. This gave rise to the apprehension that the elections to the legislative assemblies of the States of Bihar and Orissa will not be held before March 15, 1995, for their failure to comply with the directive of grant of identity cards.

4. When the writ petitions filed under Article 32 of the Constitution came up for admission before us yesterday we heard counsel for the petitioners, Shri Fali S. Nariman for

the State of Orissa in Writ Petition No 6 of 1995 and Shri Soli J. Sorabjee in Writ Petition No 2 of 1995 and Shri Bhat for the State of Bihar as well as counsel for the petitioner in Writ Petitions Nos.4 and 37 of 1995 and Shri G. Ramaswamy, counsel for the Election Commission at some length. We also heard them on the question of grant of interim relief During the course of the hearing Shri Soli Sorabjee briefly indicated in writ-

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ing the points arising for consideration. Shri G.Ramasamy, learned senior counsel for the Election Commission stated that since the State of Orissa had virtually complied with the direction, in that, it had supplied photo identity cards to almost 86% of voters, the Election Commission will not enforce its instruction contained in paragraph 06 extracted earlier. In other words Shri Ramaswamy contended that in the State of Orissa elections will not be held up for want of supply of identity cards to 'all' electors eligible to vote and for want of an undertaking/certificate in that behalf from the State Governmental. That should settle the matter insofar as Orissa is concerned. As far as the State of Bihar is concerned, Shri Ramaswamy submitted that it was a willful defaulter since it made no serious effort to comply with its direction for the supply of identity cards. On the other hand Shri Bhat contended that the Chief Election Commissioner had failed to appreciate the economic as well as the social conditions in Bihar and without taking into account the ground realities had tried to press, may, coerce the State into submission. At that stage Shri Guptoo, the learned Advocate General for West Bengal, who was in court, stated that as far as his State Government is concerned, the Chief Election Commissioner had gone to the length of saying that failure to implement his order would tantamount to a break down of the constitutional machinery in the State and threatened to inform the President of India accordingly. While there may be force in the submission that the language used in the correspondence by the Election commission is unduly harsh and abrasive, ordinarily not used in correspondence between high-level functionaries, the fact remains that the State of Bihar had lagged far behind in implementing the orders of the Election Commission. Counsel for the State of Bihar stated that his Government was firmly of the opinion that the Election Commission had no power or authority to hold up or to threaten to hold up the election process if the identity cards were not issued. This would be a larger question to be answered at the final hearing.

5.Shri Ramaswamy in the light of discussion made a statement at the Bar and followed it up by placing it in writing, which runs thus:

"The Commission has no intention of creating any constitutional crisis. Since 18 months time has been given for completion of the exercise, the deadline of 1. 1. 1995 fixed 18 months ago was insisted upon.

Since elections to the legislative assembly of the State of Bihar have been notified, the Election Commission will not withhold the elections on the ground that identity cards have not been supplied to all voters provided the Government of Bihar gives an undertaking to this court that it will complete the exercise of issuing identity cards before 30.9.1995.

This is without prejudice to the contentions

of the parties to the writ petitions.

sd/.

(S.K. Mendiratta)

Secretary Election Commission
of India"

6. From above statement it becomes clear that whatever the Election Commission may have said in the earlier correspondence and no matter how forcefully it may have insisted, the Election Commission is mindful of the consequence that may follow should the two States not be

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allowed to go to the polls for their failure to supply identity cards to 'all' eligible electors. It has also assured us that since elections to the legislative assembly of Bihar have been notified, the Election Commission will not withhold the elections for want of identity cards. The Election Commission has, however, desired that the State of Bihar should undertake to complete the entire exercise before September 30, 1995. Such an undertaking would ofcourse be without prejudice to the contentions of the parties. Shri Bhat on the other hand contended that the Election Commission has no power or authority to withhold elections for failure to issue identify cards and it cannot refuse to permit an elector to cast his vote for want of such a card, and therefore, there is no question of the State of Bihar giving any such undertaking and in any case he cannot do so without the express authority of his client. We appreciate his difficulty.

7. Taking all the above facts and circumstances into consideration we direct rule nisi to issue in all the four writ petitions and direct counsel to complete the paper books within four weeks. Printing dispensed with.

8. We further direct that the Election Commission shall not withhold the elections to the legislative assemblies of Bihar and Orissa on the ground that the said Governments had failed to complete the process of insurance of photo identity cards by the deadline prescribed by it. There will be an interim stay in the said terms. The Election Commission will, however, be free to take Such other steps as it considers necessary and arc permissible to ensure a fair free poll.

9. As regards the grant of undertaking, no Such undertaking having been sought from the State of Orissa, the learned counsel for the State of Bihar may obtain instruction, in that behalf from his clients and report within four weeks.

10. Let the writ petitions come up with Transferred Cases Nos. 13,14,16 and 18 of 1994 and Civil Appeal No.6106 of 1994 (Shri T.N. Seshan V. State of West Bengal)

11. Liberty to mention for early hearing.

12. Since the averments in the Writ Petitions filed subsequent to writ petition No.2 of 1995 are more less identical we have mainly referred to the averments in the first petition.