

RAM DEO BHANDARI AND ORS. ETC. ETC.

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v.

ELECTION COMMISSION OF INDIA AND ORS. ETC. ETC.

JANUARY 17, 1995

[A.M. AHMADI, CJ, S.P. BHARUCHA AND
K. JAYACHANDRA REDDY, JJ.]

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Constitution of India—Article 32—Power of Election Commission to withhold elections for failure to issue identity cards—Elections to Legislative Assembly of Bihar and Orissa—States not allowed elections for their failure to supply identity cards to ‘all’ eligible electors—Writ Petitions—State of Bihar allowed to go to polls—Since State of Orissa had supplied photo identity cards to 86% of voters—Election Commission not to enforce its instructions—Election.

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The five year term of the Legislative Assemblies of two States, namely, the State of Bihar and Orissa were to expire on March 15, 1995. To satisfy the mandate of Article 168 of the Constitution, elections in the two states had to be completed before March 15, 1995. However, a Press note was issued by the Election Commission stating that no poll would be taken in that State unless ‘all’ eligible electors were supplied electoral identity cards and a certificate to that effect was furnished by the concerned State Government.

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Writ Petitions were filed by the petitioners apprehending that since the two States were 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 might not take place in the said two States thereby denying to the electors thereof their constitutional right to elect a new assembly for their respective States.

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As far as the State of Orissa was concerned, 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 Commission will not enforce its instruction contained in the Press Note. For the state of Bihar, it was submitted that it was a wilful defaulter since it made no serious effort to comply with the direction of the Election Commission for the supply of identity cards. However, it was

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A alleged on behalf of the State 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.

Disposing of the matter, this Court

B **HELD : 1.** The State of Bihar had lagged far behind in implementing the orders of the Election Commission. However, the Election Commission is mindful of the consequences that may follow should the two States not be allowed to go to the polls for their failure to supply identity cards to 'all' eligible electors. The Commission assured that since elections to the legislative assembly of Bihar had been notified, the Election Commission will not withhold the elections for want of identity cards. The Election Commission, however, desired that the State should undertake to complete the entire exercise before September 30, 1995. No such undertaking having been sought from the State of Orissa, the counsel for the State of Bihar was asked on receiving instructions in that behalf from his client to report

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D within four weeks. [325-G, 326-F, 327-C]

2. 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 issuance 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 are permissible to ensure a fair and free poll. [327-B]

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F ORIGINAL JURISDICTION : Writ Petition (C) No. 2 of 1995 etc. etc.

(Under Article 32 of the Constitution of India.)

G M. Chandrasekharan, Additional Solicitor General, Soli J. Sorabjee, D.D. Thakur, G. Ramaswamy, F.S. Nariman, K.N. Bhatt, Raju Ramachandran, Gopal K. Jain, Mukul Mudgal, Rajeev Sharma, S. Murlidhar, Ms. Shomona Khanna, Niranjana Reddy, Raj Kumar Mehta, R.S. Lambat, A.K. Panda, Ravi P. Wadhvani, Ms. Leela Gupta, Gooptu, H.K. Puri, A.S. Bhasme, Kumar Rajesh Singh, B.B. Singh, A. Subba Rao, P. Parmeswaran and Navin Prakash for the appearing parties.

H In-person, (NP) *In T.C.* (C) No. 13/94.

The following Order of the Court was delivered :

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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 the 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 the expiration of the said term of five years on March 15, 1995, 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 before 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.

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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."

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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 that would tantamount to the eligible electors of the State being denied their constitutional and democratic right to elect a new

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- A assembly. This apprehension arises in the background of the following events.

- B On August 28, 1993, the Election Commission in purported exercise of powers under Rule 28 of the Registration of Elector Rules, 1960 read with Section 130(2) of the Representation of People Act, 1950, 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
- C 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
- D 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
- E 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
- F 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
- G 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
- H 15, 1995, for their failure to comply with the directive of grant of identity

cards.

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 J. Sorabjee briefly indicated in writing the points arising for consideration. Shri G. Ramaswamy, 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 Government. 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, nay, 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

- A not issued. This would be a larger question to be answered at the final hearing.

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 :

- B "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.

- C 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.

- D The is without prejudice to the contentions of the parties to the writ petitions.

Sd/-

(S.K. Mendiratta)

- E Secretary Election Commission
of India"

- F From the 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 consequences that may follow should the two States not be allowed to go 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 it is the contention of the State Government that the Election Commission has no power or authority to withhold elections for failure to issue identity cards and it cannot refuse to permit an elector to cast his vote for want of such a card and, therefore, there is
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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. A

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. B

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 Government had failed to complete the process of issuance 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 are permissible to ensure a fair and free poll. C

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 instructions in that behalf from his clients and report within four weeks. D

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*). E

Liberty to mention for early hearing.

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

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Matters disposed of.