

**THEME 3**

**REGISTRATION OF VOTERS**

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**THE GAUHATH HIGH COURT**

**(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura  
Mizoram & Arunachal Pradesh)**

**Civil Rule No 1566, 1616, 1836 & 2814 OF 1993**

<b>Mr HA Choudhury</b>	<b>Petitioner in CR 1566 of 1993</b>
<b>Md Rustam Ali &amp; others</b>	<b>Petitioners in CR 1616 of 1993</b>
<b>Md Mustafa K Passah &amp; others</b>	<b>Petitioners in CR 1836 of 1993</b>
<b>Sri Sajal Kr Roy &amp; others</b>	<b>Petitioners in CR 2814 of 1993</b>

**versus**

<b>Election Commission of India</b>	<b>Respondents &amp; others</b>
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**PRESENT**

**THE HON. CHIEF JUSTICE MR MANISANA  
THE HON. JUSTICE SMTI M SARMA**

**For the Petitioners** : **Mr B Sen  
Mr B K Das**

**Mr AFG Osmani  
Mr BM Mahanta  
Mr A Sharif  
Mr MH Rajbarbhuyan**

**For the Respondents** : **Mr SN Bhuyan, AG. Assam,  
Mr DN Choudhury  
Mr BP Katakya  
Mr KP Sarma  
Mr B Choudhury  
Mr RP Sarma, Advocates**

**Dates of Hearing** : **17. 12. 93; 21. 12. 93; 5. 1. 94;  
6. 1. 94; 7. 1. 94**

**Date of Judgement & Order** : **28 January 1994**

**Before:** Manisana, CJ and S MT. M. Sharma, J

**Elections** – Registration of voters, citizenship qualification – Procedure for ascertaining citizenship for purpose of preparation of electoral roll – Whether Election Commission had power to exclude certain categories of individuals, namely, encroachers VGR/PGR/Forest Lands/Khas lands or other government lands, from the preliminary roll – Ordinary resident in a constituency – Whether preparation of electoral roll was part of election process – Whether Court had jurisdiction to issue directions to Election Commission.

**Background Facts:** The Election Commission, from time to time, issued instructions to the Chief Electoral Officer, Assam, and other concerned authorities in connection with the revision of the electoral rolls. Special Revised Instructions were issued by the Election Commission on 18.5.93, partly superseding earlier instructions. The petitioners challenged certain clauses of the Instructions on the grounds that they were violative of Article 14 of the Constitution and the Representation of the People Act, 1950, and the rules made thereunder.

**Held:** That the instruction under clause 7.4 was violative of Article 14 of the Constitution and of the 1950 Act and the Rules; that the classification of individuals in the Instructions was vague and unreasonable and was against the provisions of the Representation of the People Act, 1950, and the Rules; that the Court had jurisdiction to issue directions to the Election Commission.

**Cases cited in Judgement:**

*Hari Prasad v V. B. Raju* (1973) AIR SC 2602

*Pampakavi Rayappa v B. D. Jatti* (1971) AIR SC 1348

*Indrajit Barua v Election Commission* (1986) AIR SC 103

## JUDGEMENT AND ORDER

### MANISANA, CJ

1. These writ petitions, namely Civil Rule Nos 1566 of 1993, 1616 of 1993, 1836 of 1993 and 2814 of 1993, were heard together and are disposed of by a common judgement as the facts and law involved in all the petitions are common. Civil Rule Nos 1836 of 1993 and 2814 of 1993 were taken up for final disposal at the stage of admission as agreed by the learned counsel on both sides. In these petitions, the petitioners have challenged clauses 7, 9 and 10 of Part – VI, and clauses 3 and 4 of Part – VII of the "Special Revised Instructions" issued by the Election Commission on 18. 5. 93 in connection with the intensive revision of electoral rolls in the State of Assam on the grounds that the instructions are violative of Article 14 of the Constitution and the Representation of the People Act, 1950, and rules made thereunder.

2. The Election Commission, from time to time, issued instructions to the Chief Electoral Officer, Assam, and other concerned authorities in connection with revision of electoral rolls. The Special Revised Instructions were issued partly superseding earlier instructions. The Special Revised Instructions contains ten (10) parts under different heads or titles. They are thus: Part I – Identification of areas having substantial presence of foreign nationals; Part II – House-to-house enumeration; Part III – Supervisory checks; Part IV – Checks by senior officers; Part V – Preparation of the list of enumerated persons; Part VI – Verification of the list by the District Magistrate; Part VII – Preparation and printing of draft electoral rolls; Part VIII – Draft publication of rolls; Part IX – Disposal of claims and objections; and Part X – Additional/supplementary directions and instructions.

Clause 4 of Part V, clauses 1, 2, 5, 7, 8, 9 and 10 of Part VI and clauses 3 and 4 Part VII are in the following terms:

"5.4 – Immediately after the said consolidated list has been prepared list in respect of a polling area, two copies of the list shall be furnished by the Electoral Registering Officer to the District Magistrate for verification of the status as Indian citizens of persons included in the lists."

"6.1 – The District Magistrate shall cause each and every name included in the list furnished under para 5.4 to be verified by employing or utilising such agencies as the State Government/District Magistrate may consider appropriate having regard to all applicable laws."

"6.2 – While making such verification, the status as Indian citizens of every person included in the list shall be verified having regard to all relevant laws as applicable in the State of Assam. These laws include, among others, Part II of the Constitution of India; Citizenship Act, 1955 (particularly section 6A as inserted

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by the Citizenship (Amendment) Act, 1985); Foreigners Act, 1946; Illegal Migrants (Determination by Tribunals) Act, 1985 and the rules and orders made thereunder. The provisions of all these Acts should be fully applied harmoniously."

"6.5 – The verification should be done strictly on the basis of relevant documents, while doing so section 6A of the Citizenship Act, 1955, in particular, has to be taken into consideration as such, the names of persons appearing in 1966 electoral rolls and of their adult descendants shall be considered as Indian citizens. If names of any Indian citizens are missing in 1966 or earlier rolls, the names, if appearing in the National Register of Citizens (NRC), can be taken into consideration."

"6.7 – As soon as a list in respect of any polling area has been verified by the District Magistrate, he shall prepare two lists. List I containing the names of persons who are verified by the District Magistrate to be Indian Citizens, and List II containing those names which are not considered as Indian citizens by the District Magistrate. Both such lists shall be duly authenticated by the District Magistrate and shall be returned to the Electoral Registration Officer for further necessary action."

"6.8 – It must be scrupulously ensured by the District Magistrate that no name of any of those persons who have been declared/detected as foreigners or illegal migrants by the Tribunals constituted under the Foreigners Act, 1946 or Illegal Migrants Determination by Tribunals Act, 1983 is included in List I in any circumstance. All such names must necessarily be included in List II and suitable remarks shall be made against the name of each such person in the said List II."

"6.9 – Where any proceedings are pending before any such tribunal in respect of any person, the name of every such person must also be included in the List II and no such name shall be included in List I in any circumstance."

"6.10 – Where the police have initiated enquiries in respect of any person with a view to filing cases under Foreigners Act, 1946 or Illegal Migrants (Determination by Tribunals) Act, 1983, the name of every such person shall also be included in List II and not in List I."

"7.3 – The Electoral Registration Officer shall also take every possible care to ensure that names of persons in whose cases objections were filed and upheld, as well as names of persons whose claims were rejected during any earlier revision of 1990, 1985, etc. on the grounds that they were not citizens of India are not included in the draft roll. He should also ensure that cases where enquiries have

been initiated by the police with a view to filing cases under the Foreigners Act, 1946 or IMDT Act 1983 are also excluded."

"7.4 – Similarly, the Electoral Registration Officer should ensure that the names of encroachers on VGR/PGR/Forest Lands/Khas Lands or any other Government lands are not included in the draft rolls.

Provided that the above instruction will not apply in relation to such eligible Indian citizens whom the State Government of Assam does not propose or plan to remove from the lands under their encroachment immediately and at least up to the end of the year 1993."

As already stated, clauses 6.9, 6.10, 7.3 and 7.4 of the Instructions have been challenged in these cases.

3. Article 324(1) of the Constitution provides that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, shall be vested in a Commission (referred to in the Constitution as the Election Commission). In view of Article 324(1), the superintendence, direction and control of the preparation of the electoral rolls for the elections to Parliament and to the Legislature of every State are entrusted to the Commission. The power of the Election Commission to make direction is wide enough to include all the powers necessary for ensuring the electoral rolls not suffering from any legal infirmity.

4. Articles 326 of the Constitution provides that the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage, that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate legislature on the grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

5. Article 327 states that, subject to the provisions of the Constitution, Parliament may by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a state, including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses. Therefore, it is open to the Parliament to prescribe the mode of the preparation of the electoral roll and say that it is not liable to be challenged except in the manner provided under the law made by the Parliament. Accordingly, the Parliament enacted the Representation of the People Act, 1959, ('1950 Act', for short).

6. From the above discussion, it follows that the power of the Election Commission to make direction in respect of preparation and maintenance of electoral rolls, whether it has legislative flavour or not, flows from Article 324(1). Every person who is a citizen of India and is not otherwise disqualified under the relevant provisions of the Constitution and the law made by Parliament shall be entitled to be registered as a voter. It is open to the Parliament to prescribe the mode of preparation of the electoral rolls and say that it is not liable to be challenged except in the manner provided under the law made by the Parliament.

It is not disputed that the Election Commission has jurisdiction to issue instructions in respect of preparation and maintenance of electoral rolls. The dispute is whether the impugned clauses of the instructions are violative of Article 14 of the Constitution, the 1950 Act and the rules made under the Acts.

7. The relevant provisions under the 1950 Act are as follows: section 16 of 1950 Act lays down the disqualifications for registration in an electoral roll; sub-section (1) runs:

"A person shall be disqualified for registration in an electoral roll if he –

- (a) **is not a citizen of India:** or
- (b) is of unsound mind and stands so declared by a competent Court; or
- (c) is, for the time being, disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections." (emphasis added).

Sub-section (2) of section 16 provides that the name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included. Section 19 of the 1950 Act lays down the conditions of registration. It reads:

"Subject to the foregoing provisions of this Part, every person who –

- (a) is not less than eighteen years of age on the qualifying date; and
- (b) **is ordinarily resident in a constituency** shall be entitled to be registered in the electoral roll for that constituency." (emphasis supplied).

Section 20 deals with the meaning of "ordinarily resident". The preparation and revision of electoral rolls have to be made in accordance with section 21. Under section 21(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 the Act. The correction of entries is provided by sections 22 and 23.

Section 24 contains a provision for an appeal which can be filed to the Chief Electoral Officer from any order of the Electoral Registration Officer under section 22 or section 23. Under section 30, no civil court shall have jurisdiction to entertain or adjudicate upon any question whether any person is or is not entitled for registration in an electoral roll for a constituency. There are elaborate rules which have been promulgated for preparation and revision of the electoral rolls, namely the Registration of Electors Rules, 1960 ('Rules' for short).

8. Rule 8 of the Rules provides that the Registration Officer may, for the purpose of preparing the roll, send letters of request in Form 4 to the occupants of dwelling houses in the constituency or any part thereof; and every person receiving any such letter shall furnish the information called for therein to the best of his ability. Instruction No 2 under Form 4 indicates that only the names of citizens of India should be entered. Rule 9 empowers the Registration Officer to access to certain registers stated thereunder for the purpose of preparing any roll or deciding any claim or objection to a roll. Under rule 10, as soon as the roll of a constituency is ready, the Registration Officer shall **publish it in draft**.

Rules 17, 18, 19, 20, 21 and 21A relate to claim or objection for inclusion in, or exclusion from, the **draft electoral rolls** and procedures for inquiry into claims and objections. Rule 23 provides the authority to whom appeals shall lie from orders of the Registration Officer deciding claims and/or objections under rules 20, 21 and 21A and the procedure for disposal of the appeal. Rule 22 deals with **final publication of roll**, viz the electoral roll of the constituency.

9. It may be mentioned here that in Article 326, the word 'voter' has been used, and section 2(1)(e) of the Representation of the People Act, 1951 defines an '**elector**':

"2(1)(e) – 'elector' in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950."

10 At this stage, it would be helpful to refer to the following decisions of the Supreme Court. In *Hari Prasad v V.B. Raju*, AIR 1973 SC 2602, a five-Judge Bench of the Supreme Court, at para 23, stated in the following terms:

"We think that the 1950 Act provides a complete code so far as the preparation and maintenance of electoral rolls are concerned. The Act enacts a complete machinery to enquire into claims and objections as regards registration as voter and for appeals from the decision of the registration officer (see sections 21 to 24 of the 1950 Act both inclusive). Elaborate rules have also been made for inquiry into claims to be registered as voters and for considering and disposing of objections thereto (see rules 12 to 24 of the Registration of Electoral Rules). The definition of the word 'elector' in section 2(1)(e) of the 1951 Act would indicate

that a person whose name is actually entered and who is not subject to any of the disqualification is S. 16 would be an elector".

In *Pampakavi Rayappa v BD Jatti*, AIR 1971 SC 1348, the Supreme Court held:

"It may be noted that the conditions about being ordinarily resident in a constituency for the purpose of registration are meant for that purpose alone and have nothing to do with the disqualification for registration which are prescribed by s.16 of the Act of 1950 which alone are relevant to the definition of an 'elector' as given in S 2(1)(e) of the Act. The entire scheme of the Act of 1950 and amplitude of its provisions show that the entries made in an Electoral Roll of a constituency can only be challenged in accordance with the machinery provided by and not in any other manner or before any other forum unless some question of violation of the provisions of the Constitution is involved."

11. The effect of the decisions of the Supreme Court above is that 1950 Act is a complete Code so far as the preparation and maintenance of electoral rolls are concerned. The definition of the word 'elector' will indicate that the person whose name actually entered in the electoral roll for the time being in force and who is not subject to any disqualification under section 16 would be an elector. The expression 'ordinarily resident' in a constituency for the purpose of registration is meant for that purpose alone and has nothing to do with the disqualifications for registration which are prescribed under section 16 of the 1950 Act which alone are relevant to the definition of 'elector'. The electoral roll is never conclusive or final in respect of these matters or citizenship. The entries made in an electoral roll of a constituency can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless some questions of violation of the Constitution are involved.

12. Let us now examine the case on hand. The impugned instructions are in respect of preparation and publication of draft electoral rolls. The summary of the impugned instruction is thus: A consolidated list of enumerated persons is to be prepared polling station-wise based on the information furnished by the head of the household under Form 4 in terms of rule 8. The consolidated list is to be prepared as soon as the enumerator pads are duly completed by the enumerators and checked by the Supervisor. Two of the consolidated list shall be furnished by the Registration Officer to the District Magistrate for verification of the status as Indian citizens of the persons included in the list by considering the relevant provisions of the laws relating to foreigners. The District Magistrate shall, after verification, prepare two lists – List I containing the names of persons who are verified by the District Magistrate to be Indian citizens, and List II containing names of those persons who are not considered as Indian citizens by the Magistrate. Both the lists (List I and List II) shall be returned to the Registration Officer by the District Magistrate for further necessary action. The names of the persons against whom any proceedings are pending before the Tribunal constituted under the Foreigners Act or the Illegal Migrants (Determination by Tribunals) Act, 1983 as well as against whom police have initiated enquiries

in respect of any person with a view to filing cases under the aforesaid two Acts, the name of such person shall also be included in List II and not in List I. The names of encroachers in village grazing reserve (VGR), public grazing reserve (PGR), forest land, khas land or any government land shall not be included in the draft rolls; provided that this instruction will not apply in relation to such eligible Indian citizens whom the State Government of Assam does not propose or plan to remove from the land in their encroachment till the end of 1993. List I shall be published as electoral rolls and not List II.

13. The impugned clauses, except the main clause 7.4, of the instruction classify persons or people of Assam into two groups, namely – (i) names of persons verified by the District Magistrate to be Indian citizens, and (ii) names of persons not considered as Indian citizens by the District Magistrate (which we shall refer to as ‘suspects’). The suspects shall be in List II referred to above, and their names are not to be entered in the draft electoral rolls published in accordance with law. The classification has been made on the basis that national origins are suspect.

14. The question which arises for consideration is whether classification is violative of Article 14 of the Constitution of India or any of the provisions of 1950 Act and rules framed thereunder. On a reading of the preamble of the Illegal Migrants (Determination by Tribunals) Act 1983, together with section 6A of the Indian Citizenship Act, 1955, it indicates that a good number of foreigners migrated to the North Eastern Region of India. The Election Commission was aware of the migration as is seen from the instruction and, therefore, the Election Commission directed that utmost care should be taken to ensure that no foreigner is enrolled as an elector or voter keeping in view "republic and election". But the classification should be reasonable. The Court will not accept every purpose as sufficient to support a classification and will insist to show that it is pursuing a "compelling" or "overriding" end or interest, that is to say, the Court will not uphold the classification unless the classification is necessary to promote that compelling interest or end. In the present case, the classification distinguishes between two groups of persons upon some "suspect" basis. In such a case, the Court may exercise strict scrutiny standard of judicial review.

15. Under Article 326 of the Constitution of India, any person who is a citizen of India and who has attained the age as prescribed by law is entitled to be registered as a voter or elector in the electoral roll, subject to any of the disqualifications prescribed under section 16 of the 1950 Act. It has already been stated that the electoral roll is never conclusive or final in respect of citizenship, and the definition of the word "elector" indicates that person whose name is actually entered in the electoral roll for the time being in force and who is not subject to any disqualifications under section 16 would be an "elector".

16. That being the position, the disqualifications for being a voter or elector for not being a citizen of India is referable only to the final electoral rolls, not the draft roll, because, on final publication of rolls, it shall be the electoral roll of the constituency. It may be stated here that

at the time of scrutiny of the nominations, the returning officer can decide whether a candidate is qualified or disqualified, that is to say, whether he is an Indian citizen or not (see section 36 of the 1951 Act); and that the question whether a person whose name is entered in the electoral roll is qualified under the Constitution and whether he suffers from any disqualification specified under section 16 of 1950 Act, can be gone into by the court trying any election petition (see *Hari Prasad's* case (supra)).

17. We reiterate once again that the Supreme Court has, in *Pampakavi's* case (supra), held that the expression "ordinary resident" in a constituency for the purpose of registration is meant for that purpose alone and has nothing to do with the disqualifications for registration as prescribed under section 16 of the 1950 Act. Therefore, the draft rolls are to be prepared on the basis of the statements submitted by the heads of the households in a constituency in Form 4 under Rule 8. Under section 31 of 1950 Act, if any person makes in connection with the preparation of an electoral roll a statement in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year or with fine, or with both. Therefore, the statement made by a head of the household in Form 4 has its own value and cannot be lightly brushed aside. Rules do not contemplate any inquiry into the question of citizenship at the stage of preparation of draft roll, although there is provision for objection after the draft roll is published on the grounds that a person who is not a citizen of India has been erroneously included.

The 1950 Act provides a complete machinery for enquiring into the claims and objections as regards the registration as voter and appeals from the decisions of the Registration Officer after the publication of draft roll. The objection and claims are to be decided by the Registration Officer, and not by the District Magistrate, after complying with the procedure laid down under the Rules. The District Magistrate is foreign to the 1950 Act and the Rules. The Electoral Registration Officer is the only authority referred to in the Act of 1950 and the Rules with regard to the preparation of draft rolls. In the present case, what has been questioned is the instruction in respect of the manner of preparation of draft electoral roll. Therefore, the impugned instructions involve an entirely different system of preparation of draft electoral roll which is applicable to the suspects only. It is true that no foreigner should be entered in the electoral roll, but the electoral roll is to be prepared and published strictly complying with the requirements of law. For these reasons, the classification is vague and unreasonable, or, in any event, it is against the provisions of the 1950 Act and the Rules.

18. Coming to impugned clause 7.4 (main) of the instruction, it provides that the names of the encroachers in VGR, forest land, Khas land or any government land shall not be included in the draft electoral rolls. Under this instruction, an Indian citizen who is otherwise eligible for registration is not to be entered in the electoral rolls, if he is an encroacher. The Election Commission have, perhaps, considered that the foreigners who came to Assam might have occupied VGR, PGR, forest land or other government land and, therefore, issued instruction as a safeguard for not entering the name of any foreigner in the draft rolls. It has already been stated

that the consolidated list for preparing and publishing draft electoral rolls are to be prepared on the basis of the statements submitted by the households in Form 4 under Rule 8; and that the condition about ordinarily resident in a constituency for the purpose of registration is meant for that purpose alone and has nothing to do with the disqualifications for registration prescribed under section 16 of the 1950 Act which alone is relevant to the definition of an 'elector'. Section 21(7) of 1950 Act provides that "if in any case a question arises as to whether 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". Therefore, the statement made in Form 4 has its own value and cannot be lightly brushed aside, and, the question whether an encroacher is an ordinarily resident is to be decided in terms of section 21(7). There is no provision under the 1950 Act and the Rules that an encroacher shall not be entered in the electoral roll if he is otherwise eligible.

19. In the above view of the matter, the instruction under clause 7.4 (main) is also violative of Article 14 of the Constitution, or, in any event, is violative of the 1950 Act and the Rules.

20. The next question which arises for consideration is whether this Court has jurisdiction to issue directions to the Election Commission. In *Indrajit Barua v Election Commission*, AIR 1986 SC 103, the Supreme Court held:

"We are not prepared to take the view that preparation of electoral rolls is also a process of election. We find support for our view from the observations of Chandrachud, CJ in *Lakshmi Charan Sen's case*, (AIR) 1985 SC 1233 (supra) that 'it may be difficult, consistently with that view, to hold that preparation and revision of electoral roll is a part of 'election' within the meaning of Art 329(b)'. In a suitable case challenge to the electoral roll for not complying with the requirements of the law may be entertained subject to the rule indicated in *Ponnuswami's case* (AIR 1952 SC 64) (supra)".

21. In *Pampakavi's case* (supra), the Supreme Court has held that entries made in the electoral roll of the Constituency can be challenged if there is violation of the provisions of the Constitution. *Indrajit Barau v Election Commission*, AIR 1984 SC 1911, the Supreme Court held that Election Commission can be directed to carry out a revision of the electoral rolls in accordance with the procedure prescribed under the 1950 Act and the Rules.

22. The above decisions of the Supreme Court make it clear that the preparation of the electoral rolls is not a part of the election process, the preparation of electoral rolls can be challenged, and the Election Commission can be directed to comply with the relevant laws in respect of preparation of electoral rolls.

23. The question which, therefore, arises for consideration is what reliefs should be given to the petitioners. Paragraph 7 of the affidavit in Msc Case No 971 of 1993 filed on behalf of the Election Commission reads: "That the respondent – 1 states that in fact there were about 1,576,000 names in List II, out of which about 1,373,000 filed the claim and about 9,000,000 claims were accepted." The affidavit goes to show that, after the publication of the draft electoral rolls, a large number of objections and claims were made based on the grounds that qualified persons have not been entered in the electoral rolls, and objections and claims were disposed of by the appropriate electoral authorities allowing claims of about 9,000,000 persons.

24. As already stated, names of persons entered in List II are not to be published. Under clause 6.8 of the instruction, in respect of persons who had been declared by the Tribunal as foreigners, their names are to be included in List II and suitable remarks are to be made against the name of each of such persons. This Court stayed the publication of draft electoral rolls but the Supreme Court vacated the order and sent back the matter with a direction to dispose of the writ petitions. The draft rolls were accordingly published during the pendency of these writ petitions. This Court made an order on 7.1.94 to the effect that the publication of the final electoral rolls shall be subject to the result of the writ petitions. It appears that the final electoral rolls of all the constituencies in Assam have not been published. Considering the overall circumstances, it will be appropriate if we direct the Election Commission to publish the names of the persons in List II (except the names of those persons who have been declared or detected by the Tribunal as foreigners and the names of those persons whose claims and objections have been disposed of by the appropriate Electoral Officers).

25. Learned counsel for the respondents has submitted that, if the names of the suspects are not included in the draft electoral roll published in accordance with law, the suspects have right to lodge claim or objection to the appropriate Registration Officer. Therefore, there is no alternative remedy and, as such, jurisdiction under Article 226 may not be invoked. In the present case, the instructions of the Commission in respect of the preparation of draft roll have been questioned, not the draft electoral roll published. It has already been stated how the draft electoral roll was prepared under the instruction. If draft electoral rolls are prepared without complying with the requirements of the law the writ petitions can be entertained, as already stated. Therefore, the submission of the learned counsel for the respondents cannot be accepted.

26. In the result, the petitions are disposed of with the direction to the Election Commission to publish the names of the persons in List II (except the names of those persons who have been declared or detected by the Tribunal as foreigners and the names of those persons whose claims and objection have been disposed of by the appropriate Electoral Officers).\*

\* as draft electoral rolls and to prepare draft electoral rolls in respect of all eligible persons from amongst the encroachers on the Government land, VGR, PGR or forest land in accordance with law and publish the same. It is made clear that, if final electoral rolls have been published, the electoral roll of a constituency as is provided under rule 22 of the Rules shall be final electoral rolls which had already been published together with the final electoral rolls published in terms of this order.

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM NAGALAND MEGHALAYA MANIPUR**  
**TRIPURAMIZORAM & ARUNACHAL PRADE SH)**  
**CIVIL RULE NO 1566, 1616, 1836 & 2814 OF 1993**

**Mr HA Choudhury...Petitioners in CR**  
**No. 1566 of 1993**

**Md Rustam Ali & Others...Petitioners in CR**  
**No. 1616 of 1993**

**Md Mustafa K Passah & Others...Petitioners in CR**  
**No. 1836 of 1993**

**Sri Sajal Kr Roy & Others...Petitioners in CR**  
**No. 2814 of 1993**

**V**

**Election Commission of India**  
**& Others...Respondents**

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**P R E S E N T**

**THE HON. CHIEF JUSTICE, MR MANISANA  
THE HON. JUSTICE SMT M SHARMA**

**For the petitioners** : **Mr B Sen  
Mr BK Das  
Mr AFG Osmani  
Mr BM Mahanta  
Mr A Sharif  
Mr MH Rajbarbhuyan  
Mr SN Bhuyan, AG, Assam**

**For the respondents** : **Mr DN Choudhury  
Mr BP Katakya  
Mr KP Sarma  
Mr B Choudhury  
Mr RP Sarma, Advocates.**

**Date of Order** : **1.2.94**

**ORDER**

The matter is taken up *suo motu* in order to make the operative portion of the order clear. Accordingly, in para 26 of the judgement the last words "No Costs" and the marks (.) are to be deleted and the following words are added:

"as draft electoral rolls and to prepare draft electoral rolls in respect of all eligible persons from amongst the encroachers on the Government land, VGR, PGR or forest land in accordance with law and publish the same. It is made clear that, if final electoral roll of a constituency as is provided under rule 22 of the Rules shall be final electoral rolls which had already been published together with the final electoral rolls published in terms of this order."

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION**

**WRITE PETITION (CIVIL) NO. 731 OF 1994**

**Lal Babu Hussein & Others**

**Petitioners**

**V**

**Electoral Registration Officer & Others**

**Respondents**

**WITH**

**CIVIL APPEAL NO. 1319 OF 1995  
(Arising out of SLP (Civil) No. 21961 of 1994)**

**Husain Dalwai & Others**

**Appellants**

**V**

**Union of India & Others**

**Respondents**

**And**

**WRIT PETITION (CIVIL) NO 56 OF 1995**

**P. U. C. L. & Others**

**Petitioners**

**V**

**Electoral Registration Officer & Others**

**Respondents**

*Before: Ahmadi, CJI, Sujata V. Manohar J and N. P. Sing J*

*Elections – Register of Voters – Preparation of Register – Qualification for registration – Procedure for dealing with persons suspected as foreigners – Ordinarily resident in constituency – Whether the Election Commission had power to lay down procedure for strict proof of citizenship as condition precedent to including names on the preliminary electoral roll.*

**Background facts:** *The petitioners filed an action in the Bombay High Court challenging the directive of the Election Commission dated 21st August, 1992 empowering Collectors of all districts in India to determine if any person was or was not a foreigner. Accordingly to the directive, the information collected by the enumerators had to be consolidated and furnished to the Collectors who in turn were expected to get the same verified through the police/intelligence agencies and then decide the question whether the person or persons concerned were citizens of India. The Electoral Registration Officers were then expected to prepare a draft electoral roll on the basis therefore and publish it, inviting objectors. Any person enumerated but not entered on the roll could apply for the inclusion of his name in the roll.*

*On 9th September 1994, another directive was issued by which power was vested in the Electoral Registration Officers to identify and declare the names of foreign nationals and delete their names from the electoral roll. It was stated in the guidelines of the Election Commission that the onus of proof of citizenship shall lie on the person seeking to have his name on the electoral roll. Pursuant to the directives of the Election Commission, an extensive search was undertaken in 39 police stations of Greater Bombay and letters were issued to the police to as many as 1.67 lakh persons calling upon them to produce (i) birth certificate; (ii) passport issued by the Government of India; (iii) certificate of citizenship; and (iv) entry made in the register of citizenship by the Government of India. This led to a virtual commotion, more particularly because it was believed to be a move to harass the minority community and to defranchise them.*

**Held:** *that in all three cases, the proceedings were quashed and the Election Commission directed, if it so desired, to initiate fresh proceedings by issuance of a notice under the relevant provision disclosing the material on the basis whereof he had reason to suspect that the person concerned was not a citizen of India. The Court also allowed the appeal arising from SLP (C) No. 21961 of 1994 and set aside the impugned judgment and order of the Division Bench of the Bombay Bay High Court dated 17th November 1994, except the undertakings given by the learned Advocate-General. The Court further issued certain guidelines to assist Electoral Registration officers in the preparation of the preliminary roll.*

**Cases cited in Judgement:**

*Andhra Pradesh v Syed Mohd Khan (1962) Supp. 3 SCR 288 State of UP v Rehametullah (1971)(2) SCC 113.*

**AHMADI CJ:** These three cases, two writ petitions under Article 32 and one special leave petition under Article 136 of the Constitution of India, raise certain vital issues regarding an individual's eligibility for inclusion of his/her name in the electoral rolls of a given constituency. Article 325 of the Constitution envisages one general electoral roll for every territorial constituency for election to either House of Parliament or the Legislature of a State and under Article 326 elections to the House of the People and to the Legislative Assembly of every State must be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than 18 years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under the Constitution or any law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election. Articles 327 and 328 empower Parliament/State Legislatures respectively to inter alia make provision with respect to all matters relating to, or connected with the preparation of electoral rolls by enacting an appropriate law. The superintendence, direction and control of the preparation of the electoral rolls has been vested in the Election Commission by virtue of Article 324 of the Constitution. These are the relevant constitutional provisions bearing on the question of preparation of the electoral rolls and eligibility of every person to be included therein to which our attention was drawn.

The Representation of the People Act, 1950 (hereinafter called 'the 1950 Act'), inter alia, provides for the preparation of electoral rolls, qualification of voters etc. Part III thereof comprising Sections 14 to 25A provides for 'Electoral Rolls for Assembly Constituencies'. Section 15 envisages an electoral roll for every Assembly Constituency. Section 16 prescribes the disqualifications for registration in an electoral roll. It says: a person shall be disqualified for registration in an electoral roll if he (a) is not a citizen of India; or (b) is of unsound mind and stands so declared by a competent court, or (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections. It further provides for striking off the name of any person who becomes disqualified after registration but if the disqualification is removed at any subsequent point of time, the proviso lays down that the name of such person shall forthwith be reinstated in that roll. Section 19 lays down the conditions of registration. It, inter alia, provides that every person who is not less than 18 years of age on the qualifying date and is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency, shall be entitled to be registered in the electoral roll for that constituency. Section 20 gives the meaning to the expression "ordinarily resident". Then comes Section 21 which provides for the preparation and revision of electoral rolls. It envisages that the electoral roll of each constituency shall be prepared in the prescribed manner and shall come into force immediately upon its final publication. It contemplates revision of the electoral roll before each general election to the House of the People or to the Legislative Assembly of a State and before each by-election to fill a casual vacancy in a seat allotted to the constituency. It further provides for the revision of the electoral roll in any year in the prescribed manner if such revision has been directed by the Electoral Commission. The proviso to that subsection lays down that if the electoral roll is not revised the validity or continued operation of the

said electoral roll shall not thereby be affected. Sub-section (3) of Section 21 which begins with a *non obstante* clause says that the Election Commission may at any time, for recorded reasons, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as he may think fit. Section 22 deals with the correction of entries in electoral rolls. According to that section, if the Electoral Registration Officer for a constituency is satisfied after inquiry that any entry in the electoral roll of the constituency is erroneous or defective in any particular or it is necessary to be transposed to another place in the roll on account of the person concerned having changed his place of ordinary residence within the constituency or is required to be deleted because 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, given by the Electoral Commission in that behalf, amend, transpose or delete the entry. The proviso to that section introduces the principle of natural justice, in that, it enjoins the Electoral Registration Officer to give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him. Section 23 provides for the inclusion of names in electoral rolls. It says that 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. On receipt of such an application, the Electoral Registration Officer is enjoined by sub-section (2) thereof to direct his name to be included therein on being satisfied that the applicant is entitled to be registered in the electoral roll. An appeal is provided against the decision of the Electoral Registration Officer under Section 22 or 23 to the Chief Electoral Officer. Lastly, Section 28 empowers the Central Government to make Rules. These are some of the provisions of the 1950 Act which have a bearing on the questions at issue.

Reference may now be made to the Registration of Electors Rules, 1960 (hereinafter called 'the 1960 Rules'), which came into force on January 1, 1961. Part II thereof concerns 'Electoral rolls for Assembly Constituencies'. Rule 5 provides that the roll shall be divided into convenient parts. Rules 10 and 11 contemplate the publication of draft rolls in the first place and inviting of objections, if any, thereto. Rules 12 to 16 deal with the lodging of claims and objections to the draft rolls. Rule 17 provides that claims or objections not lodged within the time allowed or in the specified form and manner shall be rejected. Rule 18 provides for acceptance of claims and objections without any inquiry if the registration officer is satisfied about the validity of any claim or objection. In all other cases, Rule 19 giving of notice of hearing, Rule 20 envisages a summary inquiry into the claims and objections in respect of which show cause notice under rule 19 had been given, recording of evidence and then recording of decision thereon. Rule 21 provides for inclusion of names inadvertently omitted in the rolls. Rule 21A as amended with effect from 3rd September 1987, lays down that if it appears at any time that owing to inadvertence or error or otherwise, the names of dead persons or person who have ceased to be, or are not entitled to be registered in the rolls, have been included therein, the registration officer shall exhibit the names, etc. of such electors on the notice board and also publish them in the manner prescribed and after considering the objections, decide whether or not the names of all or any of them should be deleted from the roll. This decision must be taken only after the concerned

person has been accorded a reasonable opportunity to show cause against the proposed action. After all these requirements are over, Rule 22 contemplates the publication of the final list together with amendments. In such a publication, the roll, together with the list of amendments, shall be the electoral roll of the constituency. Rule 23 provides for an appeal from any decision of the registration officer taken on the claims or objections filed against the draft list. Rule 25 says that the roll of every constituency shall be revised either intensively or summarily or partly intensively and partly summarily, as the Election Commissioner may direct. This, in brief, is the procedure laid down for the preparation of the electoral rolls.

It may also be advantageous to notice the provisions in regard to citizenship at this stage. Articles 5 to 7 of the Constitution read as under:

"5. Citizenship at the commencement of the Constitution. – At the commencement of this constitution every person who has his domicile in the territory of India and –

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

6. Rights of citizenship of certain persons who have migrated to India from Pakistan: notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if:

- (a) he, or either his parents or any of his grandparents, was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such a person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration; or  
  
(ii) in the case where such a person has so migrated on or after the nineteenth day of July 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to

such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

7. Rights of citizenship of certain migrants to Pakistan: Notwithstanding anything in Articles 5 and 6, a person who has, after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

"Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948."

Article II empowers Parliament to regulate citizenship rights by law.

The Citizenship Act, 1955 was enacted to provide for the acquisition and determination of India citizenship. It received the assent of the President on 30th December, 1955 and was published in the Gazette on the same day. Section 3 to 7 thereof provide for acquisition of citizenship. Section 3 says that every person born in India on or after 26th January, 1950 but before the commencement of the Citizenship (Amendment) Act, 1986 and those born in India on or after such commencement and either of those parents is a citizen of India at the time of his birth, shall be citizen of India by birth. Sub-section (2) of that section, however, states that the person shall not be such a citizen by virtue of this section if at the time of his birth his father possesses such immunity from suits or legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India or his father is an enemy alien and the birth occurs in a place then under occupation by the enemy. Section 4 provides for citizenship by decent. This section (which has undergone changes) as it presently stands provides that a person born outside India on or after 26th January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1992 shall be a citizen of India by descent if his father is a citizen of India at the time of his birth or a person born outside India on or after such commencement shall be citizen of India by descent if either of his parents is a citizen of India at the time of his birth provided that in the latter case if either of the parents of such a person was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this provision unless his birth is registered at an Indian consulate within the given timeframe or either of his parents is, at the time of his birth, in service under Government of India. Section 5 deals with citizenship by registration. It empowers the prescribed authority to register a person as a citizen of India who is not already such citizen by virtue of the Constitution or any other

provisions of the Citizenship Act and belongs to any one of the five categories set out in Clauses (a) to (e) thereof. Section 6 deals with citizenship by naturalisation. Section 6A was enacted by Act 65 of 1985 to give effect to the Assam Accord. Section 7 is also not relevant for our purpose as it provides for citizenship by incorporation of territory. Sections 8 to 10 provide for termination of citizenship. Section 8 states that if any citizen of India who is also a citizen or national of another country, makes a declaration renouncing his Indian citizenship, the declaration shall be registered whereupon the person shall cease to be a citizen of India. Section 9 is relevant and may be reproduced:

"9. Termination of citizenship – (1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India, who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

Section 10 provides that a citizen of India who is such by naturalisation or by virtue of marriage to a citizen of India or by registration otherwise than under clause b (ii) of Article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of the Act shall cease to be a citizen of India if he is deprived of the citizenship by an order of the Central Government under this section. It will be seen from sub-section (2) of Section 9 that if any question arises as to whether, when and how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner and having regard to such rules of evidence as may be prescribed in that behalf. If we turn to the Citizenship Rules, 1966 we find detailed provisions with regard to the procedure to be followed for the acquisition of citizenship Rules, 1966 we find detailed provisions with regard to the procedure to be followed for the acquisition of citizenship and for the termination thereof. It will thus be seen that if a person has acquired citizenship of India and a question arises whether or not he/she lost the citizenship by acquisition of the citizenship of another country, that question has to be resolved by the authority prescribed under the Act. Thus, the question whether a person is a foreigner is a question of fact which would require careful scrutiny of evidence since the enquiry is quasi-judicial in character. This question has to be determined by the Central Government, *vide Government of Andhra Pradesh v Syed Mohd Khan* 1962 Supp 3 SCR 288 and *State of U.P v Rehametullah* 1971 (2) SCC 113.

From the resumé of the aforementioned provisions of the Constitution and the Citizenship Act, it becomes clear that whenever any authority is called upon to decide even for the limited purpose of another law, whether a person is or is not a citizen of India, the authority must carefully examine the question in the context of the constitutional provisions and the provisions of the Citizenship Act extracted hereinbefore. In the instant case, Article 325 of the Constitution provides for one general electoral roll for every territorial constituency; so does Section 15 of the 1950 Act. This has to be done under the superintendence, direction and control of the Election Commission as per the mandate of Article 324 of the Constitution. Section 16 of the 1950 Act in terms states that a person shall be disqualified for registration in an electoral roll if he is not a citizen of India. Put positively, a person must be a citizen of India to be entitled to inclusion in the electoral roll. Sub-section (2) of the said section empowers striking off the name of a person who incurs a disqualification set out in clauses (a), (b) or (c) of sub-section (1) after his name is entered in the register of electoral rolls. Otherwise every person who is not less than 18 years of age on the qualifying date and is ordinarily resident in a given constituency is entitled to be registered. Section 22 empowers the Electoral Registration Officer for a constituency to delete any entry already made if on enquiry he is satisfied that it is erroneous or defective in any particular or needs to be transposed to another place in the roll or the concerned person has died or has ceased to be ordinarily resident in that constituency or that he is otherwise not entitled to be registered. Of course, before any such action is taken the person concerned, except in the case of death, must be given an opportunity to be heard. Similar is the provision in Rule 21A of the 1960 Rules which empowers the registration officer before final publication of the roll to delete the name or names of any person or persons which have been entered owing to inadvertence or error if the person concerned is dead or has ceased to be ordinarily resident in that constituency or is otherwise not entitled to be registered. The procedure for exercise of the said power is set out therein and conforms to the requirements of the principles of natural justice. It is obvious from the above that two situations arise; the first where the name is to be entered on the rolls for the first time and the section where the name already entered is required to be deleted. In the first-mentioned situation before the name is entered on the rolls, the concerned officer must be satisfied that the person seeking to have his name entered is not disqualified by reason of his not being a citizen of India. Therefore, he would be justified in requiring the concerned person to show evidence that he is a citizen of India. In the second situation, since the name is already entered, it must be presumed that before entering his name the concerned officer must have gone through the procedural requirements under the statute. This would be so even if we invoke section 114(e) of the Evidence Act. But then possibilities of mistakes cannot be ruled out. These mistakes, if any, would have to be corrected. Even if we are to assume (without deciding) that the words "is otherwise not entitled to be registered in that roll" used in Section 22 of the 1950 Act or Rule 21A of the 1960 Rules are wide enough to cover the question relating to citizenship, the issue would have to be decided after giving the concerned person a reasonable opportunity of being heard. If the opportunity of being heard before deletion of the name is to be a meaningful and purposive one, it goes without saying that the concerned person whose name is borne on the roll and is intended to be removed must be informed why a suspicion has arisen in regard to his status as a citizen of India so that he may be able to show that the basis for the suspicion is ill-

founded. Unless the basis for the doubt is disclosed, it would not be possible for the concerned person to remove the doubt and explain any circumstance or circumstances responsible for the doubt.

We now briefly deal with the factual matrix of each case.

**SLP(C) NO. 21961 OF 1994:**

Three writ petitions bearing No. 2429, 2452 and 2330 of 1994 were filed in the Bombay High Court challenging the directive of the Election Commission dated 21st August, 1992 empowering Collectors of all Districts in India to determine if any person was or was not a foreigner. According to the said directive the information collected by the enumerators had to be consolidated and furnished to the Collectors who in turn were expected to get the same verified through the police/intelligence agencies or the like and then decide the question whether the person or persons concerned were citizens of India. The Electoral Registration Officers were then expected to prepare a draft electoral roll on the basis thereof and publish it inviting objections, if any. Any person enumerated but not entered in the roll could apply for the inclusion of his name in the roll. The Electoral Registration Officer was to consider the request for inclusion of his name in the roll and decide thereon. This was followed by yet another directive dated 9th September, 1994 by which power was vested in the Electoral Registration Officers to identify and declare the names of foreign nationals and delete their names from the electoral roll. It was stated in the guidelines of the Election Commission that the onus of proof of citizenship shall lie on the person seeking to have his name in the electoral roll. Pursuant to the directives of the Election Commission, extensive search was undertaken in 39 police stations of Greater Bombay and letters were issued by the police to as many as 1.67 lakh persons calling upon them to produce (i) birth certificate; (ii) passport issued by the Government of India; (iii) certificate of citizenship; and (iv) entry made in the register of citizenship by the Government of India. This led to a virtual commotion, more particularly because it was believed to be a move to harass the minority community and to disfranchise them. Thereupon the aforesaid writ petitions came to be filed challenging the police action. In the course of the hearing of these petitions, several concessions were made by the learned Advocate General to save the action and even the Commissioner of Police filed an affidavit clarifying the fact that it was not the function of the police to delete any name from the draft electoral roll on the grounds that the concerned person is not a citizen of India. That was the function of the Electoral Registration Officer under Rule 21A of the 1960 Rules. However, it was conceded that pursuant to the directives of the Election Commission, the police had identified the areas having substantial presence of foreign nationals on the basis of intelligence reports. The notices issued to the persons suspected to be foreigners carried a statement to the effect that the addressee was or was not a citizen of India. The learned Advocate General clarified that, in all letters issued in future, such a statement would not be printed or typed on the reverse of the notice. It was also clarified that the documents in support of proof of citizenship will not be confined to those mentioned hereinabove. Other documents

having a bearing on the question of citizenship would also be entertained. The submission that a Ration Card cannot be received in evidence was spurned by the Division Bench. On the basis of these concessions the Division Bench of the High Court dismissed the writ petitions. Against the said order the petitioners of Writ Petition No. 2452 of 1994 have preferred this petition seeking special leave to appeal. We grant special leave.

The other two writ petitions have been moved on more or less similar allegations. In Writ Petition No 731 of 1994 the petitioners are residents of the area known as Motia Khan, Paharganj, New Delhi. They are poor, ignorant and illiterate slum-dwellers. Their grievance is that members of the minority community have been called upon by the Electoral Registration Officer, Delhi, by communication dated 10th October, 1994 to prove their Indian Citizenship. The petitioners contend that they and other residents of the said slum are migrants from U.P. and Bihar who came to Delhi in search of livelihood and have settled in the said area since a number of years and although they may not have the documents required to be produced as per the communication, they have several other documents, such as, ration cards, electoral rolls of the past elections, school records, etc., to show that they are bona fide residents of the said locality but they have been brushed aside with the oblique motive of deleting their names as voters. They have questioned the authority of Election Commission to undertake any such exercise. The specimen copy of the notice issued to the petitioners and others similarly situated dated 10th October, 1994 has been produced and reads as under:

"NOTICE"

Whereas report has been received indicating that you may not be a citizen of India and a such your name appears to be fit for deletion from the Electoral Rolls of this Assembly Constituency.

You are, therefore, hereby called upon to appear in person with such evidence as you may like to adduce in proof of your being an Indian Citizen before the undersigned on 13.10.1994 at 'D' Block, Vikas Bhawan, New Delhi – 110 002.

sd/-

K. C. Agrwal  
Electoral Registration Officer  
69, Ram Nagar (SC) Assembly  
Constituency, 'D' Block, Vikas  
Bhawan, New Delhi – 110 002"

It is clear that the doubt regarding the petitioner's citizenship is based on a report. Admittedly, a copy of the said report was not furnished to the addressee. The action proposed is to delete the name from the electoral rolls. The petitioners who had sought more time as they had to collect material from their villages were not granted time as in the opinion of the Electoral Registration

Officer nearly a month's time could not be said to be inadequate. It is further observed that the verification report prepared by the police 'is generally reliable', it was for he addressee to prove that they were Indian citizens and ordinary residents of the constituency. The order of 25th October, 1994 shows that even though the police had not reported the time of the visit or the names of the independent witnesses or neighbours examined, the Electoral Registration Officer placed implicit reliance on the said document and raised a presumption in regard to its correctness; It will, thus be seen that the Electoral Registration Officer totally abdicated in favour of what the police had done during verification. No effort was made to evaluate the evidence produced by the petitioners. Instead, without holding any enquiry worth the name, total and absolute reliance was placed on the police report which did not even indicate the time of visit, the witnesses examined, etc. That, too, when the said officer himself had felt the necessity of re-verification which the police expressed its inability to undertake. Could the fate of a voter whose name had figured in the earlier rolls be sealed on such evidence? That is the moot question.

Writ Petition No. 56 of 1995 has been filed by a few residents of Sanjay Amar Jhuggi Jhompri Colony also falling within the Matia Mahal constituency representing 18,000 residents of that locality. They too contend that they had shifted to Delhi in search of livelihood from U.P. and Bihar more than a decade back. They have been voters in this constituency for the last over 10 years. They contend that in the process of making the electoral rolls and the issuance of voters' identity cards, the Electoral Registration Officer of Matia Mahal constituency issued a general notice stating that all the residents of that colony were suspected to be foreigners and called upon them to appear with concrete proof in support of their claim of citizenship. They contend that when they went to the office of the Electoral Registration Officer with documentary evidence such as, ration cards, identity cards issued by the Delhi Administration, certificates from their village Pradhans and affidavits, they were told that these documents were of no avail. The petitioners and their colleagues thereafter approached the Peoples Union for Civil Liberties, Delhi, pointing out those difficulties. The said body sent a representation on behalf of the residents to the said Officer as well as the Chief Election Commissioner protesting against what they described as a wholly humiliating, unfair and unreasonable demand but received no reply to the said representation. Some of the residents had filed claims in Form No 6 for the inclusion of their names in the electoral roll. They were asked to appear before the Electoral Registration Officer on 16th and 17th December, 1994 with proof of their being Indian nationals. On their re-appearing before the said officer with the afore-mentioned documentary evidence, once again they were told that the same were of no avail. On the petitioners' learning that the revised electoral rolls had been published and out of 18,000 voters registered in the previous electoral rolls in polling stations Nos 87-108, names of only 300 persons figured, thus, leaving out almost 98 per cent of the voters, thereby depriving them of their democratic right to elect their representatives. Thereupon the present petitions came to be filed.

If we turn to the specimen notice dated 20th September, 1994, it shows that all persons included in the draft electoral rolls of Matia Mahal AC 58 polling stations Nos 87-108 were suspected not to be citizens of India. The notice contemplated an inquiry under Rule 21A of the 1960 Rules

and required the persons concerned to appear on the dates mentioned in the schedule. Some of these persons had, as stated earlier, submitted their claim in Form No.6 for inclusion of their names in the electoral roll. As stated earlier, they produced documentary evidence in the form of ration cards, identity cards issued by the Delhi Administration, Certificate of Registrar of Societies, affidavits, etc., but to no avail. Left with no alternative, they filed the present writ petition invoking this Court's jurisdiction under Article 32 of the Constitution.

Like in the previous case, in the present case also the claims were rejected solely on the report of the police without furnishing copies. It will be seen from the above averments that the notice under the Rule 21A of the 1960 Rules was a sweeping notice covering the entire populace of the area without there being any inquiry as to the citizenship of an individual.

From what we have stated hereinbefore it is clear that inhabitants of certain constituencies in Bombay and Delhi were treated as suspect foreigners and enumerators were appointed to verify if persons residing in certain polling stations were not citizens. The police was employed for this purpose and as observed earlier in Bombay they addressed as many as 1.67lakh notices calling upon the addressees to produce (i) birth certificates; (ii) Indian passports, if any; (iii) citizenship certificates; and/or (iv) extracts of entry made in the register of citizenship. In Delhi also, similar notices were addressed to hundreds of residents of Matia Mahal constituencies requiring them to produce the aforesaid documents. The time given was short and requests for extension of time were refused, presumably because the work had to be completed within a given time and date. Except the documents stated in the notices, no other proof, documentary or otherwise, was entertained. The fact that the addressees were, by and large, uneducated and belonged to the working class, particularly those who lived in Jhuggi Jhompris, was overlooked. Perhaps the instructions issued from time to time by the office of the Election Commission created an atmosphere which gave wrong signals that the verification had to be completed within the time-frame failing which they would incur the displeasure of the Election Commission exposing them to disciplinary action. This is evident from the fact that the police refused to accept any other document and prepared stereotype reports which betray non-application of mind and the Electoral Registration officers abdicated their functions and merely super-added their seals to such reports. This, notwithstanding the fact that these persons were voters in previous elections and hence it would ordinarily appear that their cases were verified before their names were entered in the electoral rolls. That is because it may be presumed that official acts performed under the provisions of the 1950 Act or the 1960 Rules were regularly done. Their names were already on the rolls and since they were sought to be removed by undertaking a special revision, whether intensive or otherwise, the procedure for removal had to be followed. Besides, as stated earlier, the atmosphere was fairly charged and because of the statements made time and again by the Election Commission the police went about its task with a mindset which gave practically no opportunity to the addressees to place the relevant material for whatever it was worth because no other documentary evidence, save and except that mentioned in the show cause notices, was entertained. Even the Electoral Registration Officers merely acted on the police report, copies whereof were admittedly not supplied to the addressees thereby making mockery of the reasonable

opportunity of being heard requirement contemplated under the 1950 Act and the 1960 Rules. Since neither Mr. Tulsi nor Mr. Ramaswamy for the Election Commission and the Chief Election Commissioner even attempted to defend the action impugned in these proceedings we need not dilate on the question. In fact, at the very first hearing on 16th January, 1995, Mr. Tulsi very fairly stated that a fresh exercise guidelines would have to be undertaken. We had on that occasion requested Mr. Tulsi to come up with a draft of the proposed guidelines for the perusal of the court. The petitioners'/appellants' counsel were also requested to apply their minds and suggest broad guidelines. Accordingly, at the last hearing on 25th January, 1995 Mr. Tulsi came up with the proposed guidelines prepared in consultation with the Election Commission. Mr. Soli J Sorabjee, learned counsel in Writ Petition No. 731 of 1994 also submitted a set of guidelines for consideration. We heard Mr. Tulsi and Mr. G. Ramsawamy on the draft guidelines submitted by Mr. Tulsi and heard their submissions on the guidelines presented by Mr. Sorabjee. We also heard Mr. Wad, senior counsel for the appellants and Mr. Prashant Bhushan, counsel for the petitioners in the other writ petitions on the proposed guidelines. Having taken the guidelines suggested by either side into consideration and having heard counsel, we proceed to dispose of all the three matters by giving the following directions:

1. We allow the appeal arising from SLP(C) No 21961 of 1994 and set aside the impugned judgement and order of the Division Bench of the Bombay High Court dated 17th November, 1994, except the undertakings given by the learned Advocate General;
2. In all the three cases we quash the proceedings and direct that the Election Commission may, if so desired, initiate fresh proceedings by issuance of a notice under the relevant provision disclosing the material on the basis whereof he has reason to suspect that the person concerned is not a citizen of India;
3. If any person whose citizenship is suspected is shown to have been included in the immediately preceding electoral roll, the Electoral Registration Officer or any other officer inquiring into the matter shall bear in mind that the entire gamut for inclusion of the name in the electoral roll must have been undertaken and hence adequate probative value be attached to that factum before issuance of notice and in subsequent proceedings;
4. The Officer holding the enquiry shall bear in mind that the enquiry being of a quasi-judicial nature, he must entertain all such evidence, documentary or otherwise, the concerned affected person may like to tender in evidence and disclose all such material on which he proposes to place reliance, so that the concerned person has had a reasonable opportunity of rebutting such evidence. The concerned person, it must always be remembered, must have a reasonable opportunity of being heard;
5. Needless to state that the Officer inquiring into the matter must apply his mind independently to the material placed before him and without being influenced by extraneous considerations or instructions;

6. Before taking a final decision in the matter, the Officer concerned will bear in mind the provisions of the Constitution and the Citizenship Act extracted hereinbefore and all related provisions bearing on the question of citizenship and then pass an appropriate speaking order (since an appeal is provided);
7. The directive issued by the Election Commission on 9th September, 1994, prohibiting the Officer from entertaining certain documents will stand quashed and the documents will be received, if tendered, and its evidentiary value assessed and applied in decision-making;
8. These guidelines not being exhaustive, the officer concerned must, where special situations arise, conduct themselves fairly and in a manner consistent with the principles of natural justice and should not appear to be acting on any pre-conceived notions; and
9. We deem it appropriate to clarify that the final electoral roll with regard to others whose names were not sought to be deleted on the suspicion that they were not citizens of India shall remain undisturbed but in respect of the petitioners and others similarly situated, these being petitions in the nature of public interest litigations, if the revision of the roll is not possible on account of paucity of time, they will be governed by the previous roll.

The appeal and the two writ petitions will stand disposed of accordingly with no order as to costs.

.....CJI

.....J  
(N.P. Singh)

.....J  
(Sujata V. Manohar)

New Delhi  
February 6, 1995