

Chhedi Lal And Ors. vs Director Of Election For Local Bodies, ... on 20 October, 1953

Equivalent citations: AIR1954ALL210, AIR 1954 ALLAHABAD 210

Author: Raghubar Dayal

Bench: Raghubar Dayal, V. Bhargava

JUDGMENT

Raghubar Dayal, J.

1. This is an application under Article 226 of the Constitution praying for the issue of directions to the opposite-parties to amend the Electoral Rolls by including the names of the applicants and other persons who are eligible to be on the list of voters in the Electoral Rolls of the Town Area of Zafrabad for the year 1953 and also to issue a direction to consider the claims and objections of the applicants without demanding a fee of Rs. 10.

In brief, the grievance of the applicants, who are 8 in number, is that they are qualified to be voters for the Town Area elections of the Town Area, Zafrabad, that their names were omitted from the Electoral Rolls published in September 1953 that when they wanted to file claims for the inclusion of their names they were asked to deposit Rs. 10 along with each claim and that the rule requiring the deposit of such an amount, in fact, took away the right of voting which they possessed. The relevant provision is proviso to para. 8, U. P. Town Areas (Preparation and Revision of Electoral Rolls) Order, 1953. Para graph 8, Clause (c) provides that any person whose name is not included in the Assembly rolls at all or in the rolls for the area relatable to the ward but who is otherwise qualified to be registered in the electoral roll of that ward may apply to the Electoral Registration Officer for the inclusion of his name in the electoral roll of the ward; and the aforesaid proviso is:

"Provided that an application under Clause (sic) above shall, except as otherwise directed by the Director, not be entertained unless it is accompanied by a fee of Rs. 10 in respect of each entry which shall in no case be refunded."

2. It is not alleged that the Director of Elections, Local Bodies, issued directions that this fee be not realised. What is contended is that this proviso was beyond the rule making power of the Local Government. These rules were made by the Local Government in exercise of the powers conferred by Section 12 (H), U. P. Municipalities Act, 1916, as applied to elections under the U. P. Town Areas Act, 1914, by a certain notification. Section 12 (H), U. P. Municipalities Act as applied to Town Areas provides in its Clause (d), Sub-clause (ii), that the State Government may, by order, make provisions

in respect of the inclusion in the Electoral Rolls of the name of any person whose name is not so included in the Assembly Rolls and who is otherwise qualified to be registered in the Electoral Roll of the Ward. There is no restriction on the nature of provisions which the State Government may by order make in connection with the inclusion of names in the Electoral Rolls. We, therefore, do not consider that the condition laying down that a fee of Rs. 10 should be charged from the applicants who want their names to be included in the Electoral Roll and whose names were not included in the Assembly Rolls or in the rolls for the area relatable to the Ward is beyond the powers of the State Government. There is no question of taking away the right which the applicants may possess by virtue of their possessing the various qualifications which make a certain person eligible for getting his name entered as a voter in the Electoral Roll. The right exists and is not taken away by the aforesaid proviso, which lays down just a procedure to be adopted for getting the omission of the name rectified.

3. The second objection of the applicants is that according to them the names of about 500 to 600 persons have been omitted from the electoral roll and that therefore the Director had a duty cast on him under para. 13 (3), U. P. Town Areas (Preparation and Revision of Electoral Rolls) Order, 1953, to amend the Electoral Roll. The aforesaid para. 13 (3) provides that where there has been any large scale omission of persons of any area entitled to be registered in the Assembly rolls from being included in such rolls, the Director may direct the Electoral Registration Officer of every ward in which any portion of such area is included to amend in such manner as he may direct the Electoral Roll of the ward by including therein the name of every such person about whom he be satisfied that he would have been registered on the Assembly roll or rolls for the area in case there had not been that large scale omission. Firstly it appears to us that it is for the Director to determine whether there is a case of any large scale omission of persons of any area and then whether he should issue the necessary direction for the amendment or just leave it for the persons omitted from the Electoral Roll to move the Electoral Registration Officer for the inclusion of their names. In the present case we find that a representation had been made to the Director and he rejected it. The application or the affidavit accompanying it does not disclose the reasons given by the Director for the rejection of their representation. The Director did exercise his right in disposing of the representation made to him and, therefore, no case exists for our directing him to exercise that right again. In the absence of the reasons it is not open for us to speculate whether he exercised that discretion fairly or not and whether a discretion which can be said not to have been exercised fairly could be interfered with by us on this petition or not.

4. In view of the above we reject this application.