

## **SYNOPSIS**

By this present Writ Petition under Article 32 of the Constitution of India, the Petitioners are seeking to challenge the manner in which electoral rolls have been prepared and maintained by the election Commission of India, and the State Election Commissions resulting in a large section of the electorates have repeatedly been denied the right to exercise their franchise in elections thus adversely affecting full functional and effective democracy as per constitutional scheme of arrangement particularly in FPTP(First Past The Post) system of elections, where margins of victory in most cases in very marginal

Some of the errors noted are:

- 1- MISSING NAMES DUE TO NON REGISTRATION BECAUSE OF CUMBERSOME & UNWELCOMING PROCESS
- 2- ILLEGAL / WRONGFUL DELETIONS
- 3- FALSE / MULTIPLE ENTRIES
- 4- TYPOGRAPHICAL ERRORS
- 5- IMPROPER/ INCOMPLETET INCORPORATION OF DETAILS

The Petitioner No.1 is "Loksatta Movement", a Non-Profit and civil society movement registered with Office of Registrar of Societies, Hyderabad under Registration No.4963 of 1997 dated 6<sup>th</sup> October, 1997.

Petitioner No.2 is "Foundation for Democratic Reforms", a Non-Profit and voluntary association registered with Office of Registrar of Societies, Hyderabad under Registration No.5741 of 1996 dated 6<sup>th</sup> October, 1997. The Petitioner No.3 herein is a "Loksatta Party" registered as a political party u/s 29A of The

Representation of the Peoples Act, 1951 with the Election Commission of India (ECI) vide proceedings No. 56/152/2006/J.S.III, dated 22<sup>nd</sup> December 2006. The Petitioner No. 4 is a social welfare trust registered under the Bombay Public Trust Act bearing Registration No. E/16644 (Mumbai) registered with Charity Commission, Mumbai, Maharashtra.

The Respondent No. 1 herein is the Union of India, Respondent No. 2 is the Election Commission of India, Respondent No.3 is Department of Post through Ministry of Communication & Information Technology. Respondent Nos. 4 to 38 are the State Governments and Union Territories. Respondent Nos. 39 to 71 are the Election Commission of all States and Union Territories in India. Respondent Nos. 72 to 77 are the various national political parties.

The present Petition is founded on the Constitutional scheme of arrangement that full functional and effective democracy requires free and fair elections be at gram panchayat level or at municipal corporation level or be at legislative assembly/council level or be at parliament level. The correct, error free and real time voter rolls for each of these elections is the first step to conduct free and fair elections. The fundamental philosophy reflected in the aforesaid understanding is that unless all eligible voters are allowed to participate by adopting "friendly", "non repulsive" and "easy accessible" process and system of 'voter registration', 'change of address/constituency due to change in work place or marriage and

therefore change of place of residence', 'correction of voters data as and when required', the citizen will be demotivated to not only NOT participate in electoral process but not even get motivated to register himself/herself as a voter.

The responsibility of preparation of electoral rolls is divided between the respective State Election Commissions and Respondent No. 2. For elections to the Rural & urban local bodies and the panchayats, it is the State Election Commission which is responsible for the preparation and maintenance of the electoral rolls. At present, the Respondent No. 2 is responsible for the preparation and maintenance of the electoral rolls for the assembly elections in all the States. The same rolls are used for Parliamentary Elections. In this regard, the Respondent No. 2 acts through the Chief Electoral Officers (CEO) who are appointed and given charge of this task in each and every State.

It is submitted that section 21 to Section 23 of the Representation of People's Act, 1950 specifically provides preparation, revision, correction and inclusion of names in the electoral roll, which is to be carried out by the Electoral Registration Officers (EROs) with the directions of Election Commissioner. Despite of the specific provisions of the R.P. Act, 1950 for such preparation, correction and revision of electoral roll as well the time and again guidelines issued by Respondent No.2, it is general knowledge that there are multifold errors repeatedly found in Voter's List for respective elections, thus hindering the process of free and

fair elections, outcome of elections and thereby hampering the democracy in toto. Therefore, it is to be noted that only the concerned authorities, who are responsible for maintenance of the electoral rolls can only be blamed for such errors.

The Election Commission of India (Respondent No.2) has on various occasion taken note of these errors and have from time to time issued guidelines/ circulars or correspondences to the respective State Election Commissioners as well as to the Chief Electoral Officers with respect to the Revision of the Electoral Rolls for free & fair elections throughout the Country, whether in case of State Legislative Assembly Election or Parliamentary Election or Member of Legislative Council Election. However, due to inemptness of the directions issued by the Election Commission and non/ proper implementation and the faulty/cumbersome procedure adopted as well as repulsive attitude of officials at the chosen ERO offices, there are various surveys/case studies & news Reports across the country highlighting the discrepancies & mismanagement in the Electoral Rolls.

The arbitrariness and ad-hoc manner of preparation and maintenance of Electoral Rolls is in violation of the principles set forth in Article 14 of the Constitution of India. Apart from being unconstitutional, such actions of the Respondents have also resulted in a number of eligible voters being deprived of the right to exercise their franchise held in various local bodies in urban and rural areas and to the legislative assemblies of various States as well as the

Parliamentary Elections, which in turn strikes the very concept of democracy, as the sanctity of the whole electoral process is brought into question.

This Hon'ble Court in view of various judgment has held that Right to vote is a constitutional Rights. Recently, in **Rajbala & Ors. Vs. State of Haryana and Ors. : 2016 (2) SCC 445** this Hon'ble Court has held that Right to vote is a constitutional rights in view of the provisions of the Representation of Peoples Act, 1950.

The Respondent No. 2 has been given the onus of maintaining correct and error free real time voter rolls for enabling functioning of true democracy, has failed to carry out its duty by establishing citizen friendly, welcoming, non-repulsive, easily accessible system of new voter registration and deletion including for change of address/constituency due to change in work place or marriage & therefore change of place of residence' making citizen demotivated to even register himself/herself as a voter. Merely voting without booth capturing cannot be regarded as free & fair elections, when foundation of elections i.e. voter rolls themselves are incorrect. therefore that the Petitioner is compelled to approach this Hon'ble Court to exercise extra Ordinary Powers vested in this Hon'ble Court, with a prayer for issuing an appropriate Writ, Order or Direction to the Respondents for exercising its authority and power for giving effect to maintaining correct & error free real time voter rolls.

**DATE****EVENTS**

12.05.1950

The Representation of People Act,1950, came into force on 12.05.1950.

In view of the statutory provisions, Respondent No. 2 is responsible for the preparation and maintenance of the electoral rolls for the assembly elections in all the States and Union Territories and the Respondent No.2 acts through the Chief Electoral Officers(CEOs), who are appointed and given charge of this task in each and every State.

Though the statute provides a detailed procedure for Registration of voters, preparation and revision of electoral rolls as well as correction/updation of entries in the electoral rolls, A large number of people are unable to avail their right to vote due to improper exercise of duties delegated by Respondent No.2 to the CEOs of different States and Union Territories. There is a lapse of procedure in taking proper steps for effective Registration, preparation and revision of electoral rolls. The most frequently occurring errors and problems in the electoral rolls and its maintenance are as under:

- (i) Illegal/wrongful deletion
- (ii) False and Multiple Entries
- (iii) Typographical errors
- (iv) Improper incorporation of names and addresses

6.10.1997

The Petitioner No. 1 and Petitioner No. 2 registered with the office of Registrar of Societies, Hyderabad.

1999

2000

2004

The Petitioners conducted several surveys over the years with respect to discrepancies, which constantly prevent the eligible voters from exercising their franchise. The first Survey was conducted by the Petitioner No. 1 in the city of Hyderabad, Telangana (then in Andhra Pradesh) in 1999. The exercise was then extended to various districts of Andhra Pradesh in the year 2000.

Further, in the same time, the Petitioner No.1 alongwith Respondent No. 2 and the Postal Department conducted a pilot project in Hyderabad and demonstrated that the Postal Officers can be trained and notified as EROs.

In 2004, the Petitioner No. 1 again undertook a Survey in Andhra Pradesh to ascertain the difference with respect to discrepancies in the electoral roll between the years 2000 and 2004.

13.05.2003

16.08.2004

23.08.2004

04.10.2004

19.06.2006

In order to make the process transparent, accessible, user-friendly and verifiable by citizens, the Petitioners conducted a research with regard to making the post offices as the nodal agencies for the process of registration and revision of electoral rolls. Since post offices are available in each and every village and locality, which are widely regarded as an approachable and user-

friendly public institution. In view of the same, time and again proposals have been made to various authorities vide their representations dated 13.05.2003, 23.08.2004, 4.10.2004 and 19.06.2006 for making post offices as a nodal agencies. Further, the Election Commission of India vide its letter dated 23.08.2004 has addressed letter to the CEOs of different States and Union Territories with respect to the scheme to be implemented with respect to the services of post offices and postmen shall be utilized during the revision process for display of rolls and receipt of duly filled in forms for registration and its checking.

19.07.2006

24.07.2006

In 2005, the Petitioners launched the Vote India Campaign for electoral reforms and during the said Campaign, the Petitioners alongwith with Janaagraha, a non-profit organization that aims to strengthen democracy in India by working for citizen participation in urban local Government, which undertook a Survey in the city of Bangalore. Based on the findings of the said Survey, Janaagraha and the Petitioner No.1 jointly made a representation dated 19<sup>th</sup> July 2006 to the Respondent No. 2, which was acknowledged by the Respondent No. 2 by their Letter dated 24<sup>th</sup> July 2006.

22.12.2006

The Petitioner No.3 herein is a "Loksatta Party" registered as a political party u/s 29A of The Representation of the Peoples Act, 1951 with the Election Commission of India (ECI) vide proceedings No. 56/152/2006/J.S.III, dated 22<sup>nd</sup> December, 2006.

28.12.2006 Time and again the Petitioners have taken active roles to find out the anomalies/discrepancies in the process of registration and revision of electoral rolls and have apprised the same to Respondent No.2. Besides that the Petitioners have given many proposals to the Respondent No. 2 in order to improvise the process of Registration and revision of electoral roll. For instance, in view of the surveys conducted by the Petitioners in the State of Andhra Pradesh with regard to the errors in the electoral rolls in the year 2000 and 2004, the Petitioners gave a proposal with respect to the necessary measures required to be taken for citizen Friendly voter Registration and the same was presented by the Petitioner before the "Committee personnel, Public Grievances, Law and Justice, Parliament of India, Rajya Sabha Secretariat".

2008 The Petitioner No.1 alongwith Janaagraha campaigned the "Jaago Re! One Billion Votes Campaign" with respect to utilize technology to ease out the cumbersome Voter Registration Process. The Campaign despite being a major hit in terms the people forthcoming to register failed when despite all procedures being followed, names of the forthcoming persons did not appear on the Voter's List or there were mistakes committed in respect of the details on account of the apathy of the officers of the Respondent No. 2 and the various State Election Commission.

18.09.2010 The Petitioner No.1 vide its letter dated 18.09.2010 sent a notes to the ECI, Respondent No.2 w.r.t., the pilot project in Andhra Pradesh to

involve the post offices for citizen friendly voter registration.

16.07.2010

The Petitioners vide its said letter made a representation to the Respondent No. 2, pointing out that inspite of proactive steps taken by the Election Commission of India in the recent years, there are many defects in the electoral rolls, which transpires from the Objective surveys conducted in the year 2000 and 2004. Further, vide its said representation, it was suggested to the ECI, Respondent No.2 to introduce the role of post offices in the electoral registration on a permanent basis by way of following activities:

1. Display of electoral rolls pertaining to the polling station areas served by the Post Office.
2. Sale of electoral rolls pertaining to the polling station for a reasonable price.
3. Sale of statutory forms for inclusion, deletion or correction of names.
4. Receipt of applications with acknowledgement.
5. Verification based on post office's data bank as well as local enquiries and knowledge of local residents for a processing fee collected from the applicant.
6. Registration of voter's name, deletion or correction, or rejection of application at the post office level.
7. Intimation to the applicant about the decision on the application.
8. Display and sale of addendum containing revisions along with electoral rolls.

- 12.07.2011 The Respondent No. 2 issued a circular directing the Returning Officers to ignore typographical errors and to allow voters to cast their votes, there are a large number of cases where this direction is wholly ignored and voters are not allowed to exercise their franchise due to various typographical errors in the rolls maintained by the authorities concerned.
- 28.02.2012 In view of the deletion of names of citizens from the list of electoral rolls, time and again various news reports of different states have been published in different Newspaper. One of the discrepancies in the Uttar Pradesh Assembly Election, 2012 showing maximum no. i.e., 609 number of voters registered from a single residential address (House No. 81) was published in The Times of India dated 28.02.2012.
- 23.07.2012 The Petitioners made another representation to the Respondent No. 2, pointing out the deficiencies in the present voter Registration process and the scope of the improvement and the political interference. Further, in view of the said representation, it was once again suggested to made post offices as nodal agency for voter Registration and maintenance of voter rolls.
- 2012-2014 False or Multiple Entries: Another common issue which casts serious aspersions upon the manner in which the electoral rolls are maintained is the number of persons whose names are registered multiple times in the electoral rolls. Further, it has also been noticed that the authorities concerned have also failed to delete the name of persons who are dead, from the electoral rolls. Apart from

the example of errors with respect to false or multiple entries, committed by the concerned authorities in the maintenance of electoral rolls also leads to a situation wherein certain groups or persons with vested interests, through illegal means, cast votes on behalf of such persons whose names ought to have been deleted from the electoral rolls. Such an act, apart from being blatantly illegal further compromises the sanctity of the electoral process which forms the cornerstone of democracy.

For instance, in the case of Ms. Ananya Srivastava (colly), during the Municipal Elections of 2012, the name came to be entered twice in the Electoral List under Serial No. 23032 and Serial No. 23033 of the Voter List. The same, when came to the knowledge of Ms. Ananya Srivastava was immediately and diligently informed to the ERO. However, the same mistake appeared again during the General Elections of 2014, where her name appeared at Sr. No. 318 and 319 of Part 153 of the Assembly Constituency No. 183- Shivadi and Parliamentary Constituency No. 31- Mumbai-South.

2013-2015

In view of the deletion of names of citizens from the list of electoral rolls, time and again various news reports of different states have been published in different Newspaper, however Respondent No. 2 has not taken effective steps to cure such deletion of names from the list.

27.11.2014

18.04.2014

19.04.2014

25.04.2014

Some of the News Reports highlighting the erroneous voter's Registration and also reports with respect to deletion from the electoral rolls are as follows:

- i. News report dated 27.11.2013 published in Livemint(online), with respect to voters list errors.
- ii. News Report dated 18.04.2014 published in the Times of India, Mumbai edition regarding two lakh names missing from the voter list
- iii. News report dated 19.04.2014 published in The New Indian Express, Mumbai Edition regarding six Million Voters name being deleted list in Maharashtra.
- iv. News report dated 25.04.2014 published in the First Post regarding complaint of missing of names from the voter list.

DATED NIL

TYPOGRAPHICAL ERRORS: Apart from illegal deletions which occur from the electoral rolls, genuine electors, who are eligible and registered in the electoral rolls are denied to exercise their franchise due to various typographical errors. For instance, there have been a large number of instances wherein due to an error in the spelling of name of a registered voter, wrong entry as to the gender or age of the voter, the said voter is deprived of the opportunity to vote.

For instance, the widespread errors which are prevalent in the electoral rolls are the rolls maintained for the Graduate's Constituency in Mumbai, wherein an election was held on 2.7.2012. In the said constituency, it was found

that the address of a total of 42% (Forty Two Percent) registered voters, as displayed on the rolls, were incomplete. In fact in a population size of more than 1.25 crores only 90,291 voters are registered.

30.5.2014

FAILURE TO FOLLOW INSTRUCTION ISSUED BY THE ECI : Respondent No. 2 has time and again issued a number of important and relevant instructions directing the Chief Electoral Officers to ensure that the sanctity of the electoral rolls prepared is preserved, however the same are not being followed by the officials concerned. These instructions have been issued with the intention of ensuring that the errors which occur frequently in the electoral rolls are kept to a minimum and those voters who are eligible can exercise their franchise.

For instance, guidelines issued by the Respondent No. 2 restrict the number of voters per booth for urban areas to 1200 (Twelve Hundred Only) and for rural areas to 1000 (One Thousand Only). The reason behind restricting the number of voters is that it has been observed that the chances of there being a higher voter turnout are closely related to the number of voters per booth. Due to there being a restricted window within which all the voters have to cast their votes, if the number of voters registered at a particular booth is above the limit as prescribed by the Respondent No. 2, it has often been observed that either all the voters are not able to cast their votes within the prescribed time limit or due to the sheer number of voters present at the booth and the

consequent waiting time involved, a large number of registered voters prefer not to vote.

Even after the recent Parliamentary Elections held in April-May 2014, when a number of cases were highlighted through the media, wherein the errors prevalent in the electoral rolls were widely reported, the Respondent No. 2 had issued another circular dated 30.5.2014 with detailed instructions and steps to be taken by the various Chief Electoral Officers to ensure that such errors were prevented from occurring.

12.11.2014 It is not only in the parliamentary election, but in the graduates and Teachers election of the Legislative Council Constituencies, various survey have conducted, where it was found a large number of names of eligible voters have frequently deleted from the list of electoral rolls, which was being also brought to the notice of Respondent No.2. Though Respondent No.2 have issued directions vide its guidelines dated 12.11.2014 vide its to the concerned State CEO, Telangana with respect to the revision of Electoral rolls for State Legislative Council of Telangana, however the same were not implemented.

28.01.2015 A News report dated 28.01.2015, which was published in the Business standard, New Delhi, regarding 22% names which are required to be deleted from the Electoral list.

20.04.2015 The Petitioners vide its said letter dated 20.04.2015, once again made a representation to the Respondent No. 2, pointing out that frequent

errors in the preparation and maintenance of electoral roll. Further in view of the said representation, it was suggested to approve a system wherein a single electoral roll is maintained for the entire country, with those electors who are eligible to vote in Graduate's or Teacher's constituency being specifically demarcated within the uniform list itself.

22.11.2015 A News report dated 22.11.2015 was published in The Hindu, Ahmedabad Edition, regarding complaint of missing of large number of names of eligible voters from the electoral list.

23.11.2015 A news report dated 23.11.2015 published in The Tribune, Gujarat regarding two lakh names missing from Voter list.

27.02.2016 Recently, the Respondent No.2 has issued instruction to all the CEOs of all the States and Union Territories with respect to the national Electoral Rolls Purification (NERP), 2016 drive to improve the health of the Electoral Rolls and rationalize the polling stations. It is a clear indication that despite various efforts by respondents time and again, the voter's rolls are not getting cleaned.

30.09.2016 In view of faulty method of preparation and revision of electoral rolls, a large section of the electorates have repeatedly been denied the right to exercise their franchise in elections held in to various State assemblies as well in the parliamentary election and therefore the petitioners by this present petition seeking following reliefs:

- a) Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction and direct the Election Commission of India(Respondent No. 2) and the Various State Election Commissions(Respondent Nos. 39 to 72) to perform, undertake and discharge various statutory duties in connection with the preparation and maintenance of correct and error free Voter Rolls as required to be done under the provisions of Representation of People's Act and the Rules framed there under and the Circulars and Notifications issued pursuant thereto;
- b) Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction, and direct the Election Commission of India(Resp. No.2) and the Various State Election Commissions (Respondent Nos. 39 to 72) to maintain proper, correct and error free Voters List with all updations, rectifications, additions and deletions prior to conducting of Elections both in State and National Level;
- c) Issue an appropriate Writ, Order or Direction to frame appropriate guidelines and/or form an Expert Committee comprising of such persons having adequate knowledge and expertise as regards the Political and Election Process to formulate detailed Policy, Framework and Mechanism of preparation and maintenance of the Voter Roll and timely updation revision and modification of the same to ensure fair conduct of elections at the Local, State and National Level

and to protect and preserve the democratic franchise of the country;

d) Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction and direct the Election Commission of India and the various State Election Commissions to formulate a set of Uniform Instructions/Guidelines for preparation of single unified Electoral Roll which includes the Voter List for all elections held in India including Graduate and Teacher Constituencies;

e) Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction to direct the Election Commission of India(Respondent No. 2) and the Various State Election Commissions (Respondent Nos. 39 to 72) to appoint Postal Offices as Nodal Agencies for the purpose of collecting the data, ensuring its authenticity, updating and rectifying the Voter Roll and undertaking registration of Fresh Eligible Voters.