PETITIONER:
LAL BABU HUSSEIN & OTHERS

Vs.

RESPONDENT:
ELECTROL REGISTRATION OFFICER & OTHERS

DATE OF JUDGMENT06/02/1995

BENCH:
AHMADI A.M. (CJ)
BENCH:
AHMADI A.M. (CJ)
SINGH N.P. (J)
MANOHAR SUJATA V. (J)

CITATION:
1995 AIR 1189 1995 SCC (3) 100
JT 1995 (2) 229 1995 SCALE (1)483

ACT:

HEADNOTE:

JUDGMENT:
1. 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 with the preparation of electoral rolls by
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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.
2.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 2 5A 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) for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections. If 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. 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 bye-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 Election Commission. The proviso to that sub-section 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 spe-

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cial directions, if any, given by the Election 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.

3.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 11 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. Rule 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 enjoins 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. On such publication, the roll together with the list of amendments shall be 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 or every constituency shall be revised either intensively or summarily partly intensively and partly summarily, as the Election Commissioner may direct. This, in brief, is the procedure laid down for the
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preparation of the electoral rolls.

4. It may also be advantageous to noticethe provisions in regard to citizenship at this stage. Articles 5 to 7 of the Constitution read as under: by that Government;

> "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 of India from Pakistan Notwithstanding anything in Article 5 a person who has migrated of the territory of India from the territory now included grants to Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if-

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such 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 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 therefor 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;

Article II empowers Parliament to regulate citizenship rights by law.

5. The citizenship Act, 1955 was enacted to provided for the acquisition and determination of Indian citizenship. It received the assent of the President on 30th December, 1955 was published in the Gazette on the same day. Sections 3 to 7 thereof provide for acquisition of citizenship. Section3 days that every person born in India on or after 26th January, 1950 but before the commencement of teh citizenship (Amendment) Act, 1986 and those

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born in India on or after such commencement and either of whose parents is a citizen of India at the time of his birth, shall be a 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 descent. 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 a 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 time frame 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 a citizen of India:
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> 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 then under clause b (ii) of Article 6 of the Constitution or clause (a)sub-section (1) of section 5 of the Act
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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 in 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 has lost the citizenship by acquisition 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 UP. v. Rehamatullah 1971 (2) SCC 113.

6. From the resume 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 323 of the Constitution provides for one general electoral roll for every territorial constituency; so does 1950 Act. This has to be done under the Superintendence, direction and control of Election Commission as per the man date of Article 324 the Constitution. Section 16 of the 1950 Act in terms states that a person shall disqualfied 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 detective 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

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the above that two situations arise; the first where the name is to be entered on the rolls for the first time and the second 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 1 14(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 2 1 A 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.

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

SLP (C)NO. 21961 OF 1994:

8. Three writ petitions bearing Nos. 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

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(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. 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 ground that

the concerned person is not a citizen of India. That was function of the Electoral Registration Officer under Rule 21 A of the 1960 Rules. However, it was conceded that pursuant to the directives of the Election Commission, the police had identified the areas having sub-stantial 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 will 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.

9. The other two writ petitions have been moved on more or less similar allegations. In Writ Petitions 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 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 the 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

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

You are, therefore, hereby called

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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, Nex. Delhi - 110 002.

Sd/-

K. C. Agarwal

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 0officer 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 the 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 neighbors examined, the Electoral Registration Officer placed implicit reliance on the said document and raise 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 reverification 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? 'Mat is the moot question.

10. 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' identify 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, identify 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 their 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

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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 aforementioned 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% of the voters thereby depriving them of their democratic right to elect their representatives. Thereupon the present petitions came to be filed.

11. 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 the 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, identify 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.

12. 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 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'.

13. 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 1.67 lakh 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 aforestated 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-frame. 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 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

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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 mind-set 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 a mockery of the reasonable opportunity of being heard requirement contemplated under the 1950 Act and the 1960 Rules. Since neither Mr. Tulsi nor Mr. Ramaswam 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 exercises under revised guidelines would have to be undertaken.

We had no 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 hearings 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 Ramaswamy 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 considerations and having heard counsel, we proceed to dispose of all the three matters by giving the followng directions:

1. We allow 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 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;

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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 holdings the enquiry shall

bear in mind that the enquiry being 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 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 dean 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 governed by the previous roll.

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

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