

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi – 110001.

No.23/2011-ERS

Dated : 14th November, 2011.

To,

The Chief Electoral Officers
of all States/UTS

Subject: - Disposal of Claims/Objections during the revision process and printing of supplements in case any bye election or municipal elections are announced meanwhile – regarding.

Sir,

As you are aware, presently, the process of special revision of electoral rolls under section 21(3) Representation of the People Act, 1950 w.r.t 1.1.2012, is underway and the draft rolls have been published. The filing of claims and objections is over in most of the States/UTs and the claims and objections received are being disposed of by the concerned EROs in accordance with the law. The revision process will culminate in the final publication of electoral rolls in January, 2012.

2. A question has been raised by certain political parties and others whether the names can be included or deleted in or from the existing roll of 2011 during the current revision process and before the final publication of the rolls in January, 2012. Some of the electoral registration authorities are taking the view that the current electoral roll gets frozen on the draft publication of the roll during the revision process. It is clarified that this is not the correct legal position. As per the provisos to sections 21(2) and 21(3) of the Representation of People Act, 1950, the validity of the existing electoral roll does not get affected and the existing electoral roll continues to be in force until the completion of the revision ordered by the Election Commission under Sections 21(2) or 21(3). Therefore, even during the ongoing process of revision of electoral rolls, the persons who fulfill the

qualifications for inclusion of their names with reference to the earlier qualifying date, i.e., 01.01.2011 in the present case, shall be eligible to apply for such inclusion under section 23 of the Representation of the People Act, 1950. Likewise, the provisions of section 22 providing for deletion, correction or transposition of entries also apply during this process of revision. In this connection, your attention is also invited to Rule 25(4) of the Registration of Electors Rules, 1960 which lays down that if any name of an elector is included under section 23 or any deletion, etc. is made under section 22 in the existing roll, such inclusion/deletion, etc. shall also be carried out in the electoral roll under revision.

3. Further, your attention is invited to the following observation of the Hon'ble Supreme Court in case *Lakshmi Chandran Sen & Others Vs. A.K.M. Hassan Uzzaman & Others* [Civil Appeal Nos. 739 to 741 and 742 of 1982] which shows that insofar as the electoral rolls are concerned, there is never a moment in the life of a political community when some electoral roll or the other is not in force:-

“The fact that the revision of electoral rolls, either intensive or summary, is undertaken by the Election Commission does not have the effect of putting the electoral roll last published in cold storage. The revision of electoral rolls is a continuous process which has to go on, elections or no elections. Various provisions contained in S.21 indicate that if an electoral roll is not revised, its validity and continued operation remain unaffected, at least in a class of cases. That exemplifies an important principle which applies in the case of electoral rolls Section 21(3) of the Act of 1950 confers upon the Election commission the power to direct a special revision of the electoral roll. The proviso to that sub-section also says that until the completion of the special revision so directed, the electoral roll for the time being in force shall continue to be in force. That proves the point that Election laws abhor a vacuum. Insofar as the electoral rolls are concerned, there is never a moment in the life of a political community when some electoral roll or the other is not in force. Section 23(3) of the said Act also points in the same direction. It is not suggested that claims and objections filed in the prescribed form should not be decided promptly and in accordance with law. But, the important point which must be borne in mind is that whether or not a revision of an electoral roll is undertaken and, if undertaken whether or not it is completed, the electoral roll for the time being in force must held the field. Elections cannot be postponed for the reason that certain claims and objections have still remained to be disposed of. According to sub-rule(3) of rule 23 of the Registration of Electors Rules, 1960, the "presentation of an appeal under this rule shall not have the effect of staying or postponing any action to be taken by the Registration Officer under rule 22". Rule 22 imposes upon the Registration Officer the obligation to publish the electoral roll which, together with the list of amendments, becomes the electoral roll of the constituency. Thus, the fact that an appeal is pending

under rule 23(1) against the decision of a Registration Officer under Rule 20, 21 or 21A does not constitute an impediment to the publication of the roll and to the roll, upon such publication, coming into force. Rule 20 provides for inquiry into claims and objections: Rule 21 provides for inclusion of names which are left out of the roll owing to inadvertence or error; while, Rule 21A provides for the deletion of names of dead persons and of persons who cease to be, or are not, ordinary residents of the particular constituency. Notwithstanding the fact that the roll contains these errors and they have remained to be corrected, or that the appeals in respect thereof are still pending, the Registration Officer is under an obligation to publish the roll by virtue of Rule 22.

(Paras 16 to 19)

3. I am, therefore, to clarify that if a person who has applied for inclusion of name in the draft electoral roll under revision is eligible to be included in the existing roll because he was qualified to be included in the existing roll as he was already 18 years old on 1-1-2011, then such applications should be treated as filed under Section 23 (1) of the Representation of the People Act, 1950, i.e. during continuous updation of electoral rolls and should be dealt with in accordance with Rules 26(3) and 26(4) and an additional supplement of electoral roll may be published, before the date of final publication of electoral rolls, wherever the necessity there for arises in the case of any bye-election or municipal election being announced meanwhile by the Election Commission of India or the State Election Commissioner.

4. Receipt of this letter may kindly be acknowledged.

Yours faithfully,

Sd/-
(AJOY KUMAR)
UNDER SECRETARY

Copy to all State Election Commissioners, for information.