REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3040-3041 OF 2004

The Chief Election Commissioner Etc. ... Petitioners

Versus

Jan Chaukidar (Peoples Watch) & Ors. ... Respondents

ORDER

These are appeals by way of Special Leave under Article 136 of the Constitution against the common order dated 30.04.2004 of the Patna High Court in C.W.J.C. No.4880 of 2004 and C.W.J.C. No.4988 of 2004.

2. The facts very briefly are that Article 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 and 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 for any such election. In accordance with Article 326 of the Constitution, Parliament has enacted the Representation of the People Act, 1950 (for short 'the 1950 Act') for registration of voters at such elections to the House of the People and to the Legislative Assembly of every State and has also enacted the Representation of the People Act, 1951 (for short 'the 1951 Act') for the conduct of elections to the Houses of Parliament and to the Houses of Legislature of each State.

3. The word "elector" is defined in the 1951 Act in relation to the constituency to mean a person whose name is entered in electoral rolls of the constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the 1950 Act. Section 16(1)(c) of the 1950 Act provides that a person shall be disqualified for registration in an electoral roll if he 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.

4. Section 4 of the 1951 Act lays down the qualifications for membership of the House of the People and one of the qualifications laid down is that he must be an “elector” for any Parliamentary constituency. Similarly, Section 5 of the 1951 Act lays down the qualifications for membership of a Legislative Assembly of a State and one of the qualifications laid down is that he must be an “elector” for any Assembly constituency in that State. Section 62 of the 1951 Act is titled “Right to vote” and it provides in sub-section (5) that no person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police. The proviso to sub-section (5) of Section 62 of the 1951 Act, however, states that the sub-section will not apply to a person subjected to preventive detention under any law for the time being in force.

SUPREME COURT OF INDIA
JUDGMENT

5. Writ petitions C.W.J.C. No.4880 of 2004 and C.W.J.C. No.4988 of 2004 were filed in the Patna High Court contending that a person, who is confined in prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police is not entitled to vote by virtue of sub-section (5) of Section 62 of the 1951 Act and accordingly is not an "elector" and is, therefore, not qualified to contest elections to the House of People or the Legislative Assembly of a State because of the provisions in Sections 4 and 5 of the 1951 Act. By the impugned common order, the High Court accepted this contention in the writ petitions and held:

> "A right to vote is a statutory right, the Law gives it, the Law takes it away. Persons convicted of crime are kept away from elections to the Legislature, whether to State Legislature or Parliament, and all other public elections. The Court has no hesitation in interpreting the Constitution and the Laws framed under it, read together, that persons in the lawful custody of the Police also will not be voters, in which case, they will neither be electors. The Law temporarily takes away the power of such persons to go anywhere near the election scene. To vote is a statutory right. It is privilege to vote,

> which privilege may be taken away. In that case, the elector would not be qualified, even if his name is on the electoral rolls. The name is not struck off, but the qualification to be an elector and the privilege to vote when in the lawful custody of the police is taken away."

6. Aggrieved, by the findings of the High Court, the appellants have filed these appeals. We have heard learned counsel for the parties and we do not find any infirmity in the findings of the High Court in the impugned common order that a person who has no right to vote by virtue of the provisions of sub-section (5) of Section 62 of the 1951 Act is not an elector and is therefore not qualified to contest the election to the House of the People or the Legislative Assembly of a State.

7. These civil appeals are accordingly dismissed. No costs.

.....J.
(A. K. Patnaik)

.....J.
(Sudhansu Jyoti Mukhopadhaya)

New Delhi,
July 10, 2013.

SUPREME COURT OF INDIA
JUDGMENT