

**(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT OF JUDICATURE, ANDHR APRADESH AT
HYDERABAD**

FRIDAY, THE TWENTY SEVENTH DAY OF OCTOBER TWO
THOUSAND AND SIX

PRESENT:
**THE HON'BLE: SRI G.S. SINGHVI THE CHIEF JUSTICE
AND
THE HON'BLE; SRI JUSTICE C.V.NAGARJUNA REDDY**

WRIT PERITION NO. 22221 of 2006

Between :

G.Rama Moorthy, S/o. Late Chinnaiah.

..... PETITIONER

AND

1. Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi – 110 001, rep. by its Secretary.
2. Chief Electoral Officer, & Ex-Officio Principal Secretary to Govt., GAD (Elections-E) Dept., A.P. Secretariat, Hyderabad

... RESPONDENTS

Whereas the petitioner above named through his Advocate Sri A. Ramalingeswara Rao, presented this writ petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith the High Court may be pleased to issue any appropriate Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the guidelines in para 4 in Lr.No.37/APLC/2006-PLN III dt.27-9-2006 issued by the 1st Respondent for enumeration for graduate constituencies as illegal and void and consequently direct the respondents to accept the applications of its employees in bulk from any Gazetted Head of Office, Statutory Body, Corporation or Public Undertakings as was done in respect of Teachers and to accept certified copies of the recognized degrees/diplomas from Gazetted Officers in respect of other registration in respect of Graduate constituencies for preparation of electoral rolls for A.P. Legislative Council for its Graduates' Constituencies.

AND WHEREAS the High Court upon hearing the arguments of Sri A.Ramalingeswara Rao, Advocate for the Petitioner and perused the record and of Shri C.P. Sarathy accepts notice on behalf of Election Commission of India i.e. Respondent No.1 and of G.P. for Election Department accepts notice on behalf of Chief Electoral Officer and Ex-Officio Principal Secretary to Government, GAD (Elections-E) Department i.e. Respondent No.2 directed issue of notice of motion to the Respondents for 31-10-2006 for final disposal of the writ petition.

You viz.,

1. The Secretary, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi – 100 001.

2. The Chief Electoral Officer & Ex-Officio Principal Secretary to Govt., GAD (Elections-E) Dept., Secretariat Buildings, Secretariat, Hyderabad.

are directed to show cause on or before 31-10-2006 to which date the case stands posted as to why in the circumstances set out in the petition and the affidavit filed therewith (copy enclosed) this writ petition should not be admitted. The Counter affidavits be filed by 31-10-2006 after giving advance copy to the counsel for the petitioner. The Court have fixed the case for 31-10-2006 keeping in view the peculiar nature of the relief sought by the petitioner.

Note : Post on 31-10-2006.

**Sd/- K.DAULAT KUMAR
ASSISTANT REGISTRAR**

// TRUE COPY//

for ASSISTANT REGISTRAR

To

1. The Secretary Election Commission of India Nirvachan Sadan, New Delhi.
2. The Chief Electoral Officer & Ex-Officio Principal Secretary to Govt., GAD (Elections-E) Dept., Secretariat Buildings, Secretariat, Hyderabad.(1 & 2 by RPAD alongwith a copy of Petition and Affidavit)
3. Two CC's to G.P. for Election Department, High Court of A.P., Hyderabad (OUT)
4. One CC to Sri A. Ramalingeswara Rao, Advocate (OPUC)
5. Two Spare Copies

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

WRIT PETITION NO. 22221 OF 2006

Between :

G.Rama Moorthy, S/o. Late Chinnaiah.
Hindu, aged about 67 years, Business,
Resident of C-841, NGOs Colony,
Vanasthalipuram, Hyderabad – 500 070

..... PETITIONER.

AND

1. The Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi – 110 001 rep. by its Secretary.
2. The Chief Electoral Officer & Ex-Officio Principal Secretary to Govt., GAD (Elections-E) Dept., Secretariat Buildings, Secretariat, Hyderabad

.... RESPONDENTS

AFFIDAVIT FILED BY THE PETITIONER

I, G.Rama Moorthy, S/o. Late Chinnaiah, Hindu, Male, aged about 67 years. Occ. Business, resident of C-841, NGO's Colony, Vanasthalipuram, Hyderabad – 500 070, do hereby solemnly and sincerely affirm and state as follows:

1. I am the petitioner herein and as such I am well acquainted with the facts of the case.
2. I submit that I retired as Superintendent. Accounts Branch. Office of the Director of Printing & Stationery, Chanchalguda, Hyderabad. During my service I held the post of General Secretary, A.P. NGO's Association and Chairman. Joint Council of Associations and Unions. After my retirement, I formed a Bank named "Bhavana Rushi Urban Coop. Bank Ltd." in the year 1997 and became its Chairman. I also organized A.P. State Urban Coop. Banks' Federation Ltd. and became its President. I am also closely associated with various social organizations and actively participating in social, political and cultural activities in general and cooperative movement in particular. I intend to contest as a Member to Legislative Council in the

ensuing elections from the Graduates Constituency of Mahabubnagar, Ranga Reddy and Hyderabad Districts.

3. I submit that the A.P. Legislative Council Act, 2005 (No.1 of 2006) was passed by the Parliament providing for the creation of Legislative Council for the State of Andhra Pradesh. It provided for filling up of 90 seats by persons elected by the electorates referred to in sub-clauses (1), (b), (c), (d) and (e) of Clause 3 of Article 171. They are as follows:

(a)	Municipalities, District Boards and other local authorities Electorate	31
(b)	Graduate Electorates	8
(c)	Electorates of persons engaged in attaching any educational institutions not lower than that of Secondary School	8
(d)	Elected by Members of the Legislative Assembly	31
(e)	Nominated by the Governor	12
		90

The election to the categories (a) to (d) mentioned above shall be held in accordance with the system of proportional representation by means of the single transferable vote. Sub-section 3 of Sec.3 of A.P. Legislative Council Act, 2005 further states that as soon as may be after the commencement of the Act, the President after consultation with the Election Commission shall by order determine the constituencies into which the State of Andhra Pradesh shall be divided for the purpose of elections to the State Council under each of the said categories the extent of constituency and the number of seats to be allotted to each constituency. Accordingly, the Delimitation of Council Constituencies (Andhra Pradesh) Order, 2006 was made by the President in consultation with the Election Commission as per which the following Graduates Constituencies and the number of seats allotted to each such constituency was determined.

Name of the Constituency	Extent of the Constituency	Number of seats
Srikakulam- Vizianagaram – Visakhapatnam Graduates	Srikakulam Vizianagaram, Visakhapatnam	1
East-West Graduates	East Godavari, West Godavari	1
Krishna-Guntur Graduates	Krishna, Guntur	1

Prakasam-Nellore-Chittoor Graduates	Prakasam, Chittoor	Nellore,	1
Kadapa-Anantapur-Kurnool Graduates	Kadapa, Kurnool	Anantapur,	1
Mahabubnagar-Ranga Reddy – Hyderabad Graduates	Mahabubnagar, Reddy, Hyderabad	Ranga	1
Medak-Nizamabad-Adilabad-Karimnagar Graduates	Medak, Adilabad, Karimnagar.	Nizamabad,	1
Warangal-Khammam-Nalgonda Graduates	Warangal, Nalgonda	Khammam,	1

4. The Election Commission of India has decided to prepare the Electoral Rolls of the concerned Graduates' and Teachers' Constituencies as required under Sec.27 of the Representation of People Act, 1950. Rule 31 of the Registration of Electors Rules, 1960 deals with the rolls of Graduates' and Teachers' constituencies. Sub-rule 1 states that the roll of every Graduates and Teachers constituencies shall be prepared in such form manner and language or languages as the Election Commission may direct. Sub-rule 2 states that the roll shall be divided into convenient parts which shall be numbered consecutively. Sub-rule 3 provides that for the purpose of preparing the Roll the Registration Officer shall on or before the 1st October issue a public notice calling upon every person entitled to be registered in that roll to send to or deliver at his office before the 7th day of November or next following day an application in Form-18 or Form-19 as the case may be for inclusion of his name. Sub-rule 4 states that the said notice shall be published in two news papers having circulation in the constituency and republished in them once on or about 15th October and again on or about 25th October. Accordingly, a preparation of Electoral Roll of concerned Graduates and Teachers Constituencies was undertaken with reference to 1st November, 2006 as the qualifying date in accordance with the following programme:

Sl. No.	Activities	Period/Date
1.	Issue of public notice under rule 31(3) of the Registrations of Electors Rules 1960	29-9-2006 (Friday)
2.	First Republication of notice in News	16-10-2006 (Monday)

- Papers under Rule 31(4)
3. Second Republication of notice in News Papers under Rule 31(4) 24-10-2006 (Tuesday)
 4. Last date of receipt of applications in Form 18 or Form 19 as the case may be 6-11-2006 (Monday)
 5. Period for the preparation of manuscripts and printing of draft roll. 20-11-2006 (Monday)
 6. Draft publications of Electoral Rolls 22-11-2006 (Wednesday)
 7. Period for filling claims and objections 22-11-2006 (Wednesday) to 7.12.2006 (Thursday)
 8. Date by which the claims and objections shall be disposed of and supplements be prepared and printed. 27-12-2006 (Wednesday)
 9. Final publication of Electoral Rolls 29-12-2006 (Friday)

The qualification prescribed by an Elector in Graduates Constituency are-

- 1) on the qualifying date, i.e. 1.11.2006 he should have been ordinarily resident in the constituency.
- 2) He should have been for atleast 3 years, before the qualifying date, 1.11.2006 either a Graduate of an University in the territory of India or in possession of any of the qualifications notified by the State Government as equivalent to that of a Graduate in an University in India.

The eligibility of a person for enrolment in a Graduate Constituency will be determined having regard to the provisions of Article 171 (3)(a) of the Constitution and Sections 27(3)(a), 27(5)(a) and 27(6)(a) of the Representation of People Act, 1950. The Commission has prescribed that the applicant should submit the required documents in support of their educational qualifications for inclusion of names in a Graduate Constituency in Form 18 under Rule 31(3) of Registration of Electoral Rolls, 1960. It was further stated that the applications in bulk whether submitted in person or by post will not be considered for inclusion by the concerned Electoral Registration Officer. The said stipulation of not receiving the applications in bulk was in accordance with the instructions issued by the

Election Commission of India in its communication to the 2nd Respondent in communication No.37/AP-LC/2006-PLN III dt.27-6-2006. I submit that the Respondents can accept the applications for registration from individuals through their authorized representative without violating the sanctity of registration. They can accept a duly certified copy of the degree instead of demanding the original. Similarly, in case of employed Graduates, the heads of institutions can send the certified list for registration purpose instead of making every employed Graduate appear before the Electoral Registration Officer. When the respondents are taking up the revision of electoral rolls after a gap of more than 2 decades, it should have employed more number of officers for registration of voters by making door to door enrolment. Even though there are nearly 25 lakhs Graduate voters, nobody is voluntarily coming forward to register their names as voters. Thus, the registration process has become very tardy and cumbersome. Unless the respondents take liberal steps for registration of voters, there will not be sufficient number of voters in the ensuing elections to the Graduates' Constituencies making it in imperfect representation. I submit that the instructions of the 1st Respondent have no statutory force and contrary to the provisions of the Representation of Peoples Act and the Rules for registration of Electors framed thereunder. I made a representation pointing out the inconvenience of individual persons registering their names as electors on 5.10.2006, 10.10.2006 and 13.10.2006 to the 2nd Respondent but no action has been taken. But curiously in respect of teachers bulk registration of teachers was accepted consequent to the representation made by various teachers associations and a Memo No.3597/Elecs.E/A2/2006-8 dt.10.10.2006 was issued by the 2nd Respondent permitting the heads of educational institutions to send Form No.19 certifying the eligibility of the applicants directly. I submit that the said action of the respondents is violative of Article 14 of the Constitution of India apart from resulting in an imperfect preparation of electoral roll for the ensuing elections to the Graduate constituencies.

5. I submit that the process of registration of voters has already commenced and as per the news reports only the following Graduates were registered as electors as on 20.10.2006.

1.	Hyderabad etc.	942
2.	Krishna District	495
3.	Nellore District	360
4.	Karimnagar District	798
5.	Ongole	147
6.	East Godavari District	1300
7.	Srikakulam District	341

When lakhs of Graduates are eligible to be registered as electors in the State of Andhra Pradesh, due to the restriction placed by the respondents, the electors are not coming forward to register their names. The preparation of electoral roll will not be affected in any manner if bulk applications are received in respect of Graduates also from the heads of institutions where they are working or from professional bodies where they have registered their names. Otherwise the entire electoral process would be vitiated. It is, therefore, just and necessary that this Hon'ble Court may be pleased to direct the respondents to permit the acceptance of applications in bulk from any Gazetted Head of Office, Statutory Body, Corporation or Public Undertaking or representative of individuals as was done in respect of Teachers in respect of Graduates constituencies pending disposal of the above Writ Petition.

6. I submit that I have no other effective alternative remedy except to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India and I have not filed any suit and no proceedings is pending for the relief prayed herein.

For all the aforesaid reasons, it is therefore prayed that this Hon'ble Court may be pleased to issue any appropriate Writ, Order or Directions, more particularly in the nature of a Writ of Mandamus declaring the guidelines in para 4 in Lr.No.37/AP-LC/2006-PLN III dt.27.9.2006 issued by the 1st Respondent for enumeration for Graduate Constituencies as illegal and void and consequently direct the respondents to accept the applications of its employees in bulk from any Gazetted Head of Office, Statutory Body, Corporation or Public Undertaking as was done in respect of Teachers whether submitted in person or by post for registration by the

Electoral Registration Officers in respect of Graduate constituencies for preparation of electoral rolls for A.P. Legislative Council for its Graduates' Constituencies and pending disposal of the above Writ Petition, to direct the respondents to permit the acceptance of applications of its employees in bulk from any Gazetted Head of Office, Statutory Body. Corporation or Public Undertaking as was done in respect of Teachers and to accept certified copies of the recognized degrees/diplomas from Gazetted Officers for the purpose of registration of voters in respect of Graduates Constituencies as pass such other further orders as this Hon'ble Court may deem fit in the circumstances of the case.

Deponent

Solemnly affirmed and signed his name
In my presence on this 24th day of October, 2006.
At Hyderabad

Before me

Advocate, Hyderabad

VERIFICATION

I, G.Rama Moorthy, S/o. Late Chinnaiah, above named Petitioner, do hereby solemnly and sincerely affirm and state the facts stated in the paras 1 to 5 are true to the best of my knowledge and belief and those in para 6 is based on the legal advice and I believe the same to be true.

Hence verified on this 24th day of October, 2006 at Hyderabad

COUNSEL FOR PETITIONER

PETITIONER

MEMORANDUM OF WRIT PETITION
(Under Article 226 of the Constitution of India)
IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT
HYDERABAD
(SPECIAL ORIGINAL JURISDICTION)
W.P. 22221 OF 2006

Between:

G.Rama Moorthy, S/o. Late Chinnaiah.
Hindu, aged about 67 years, Business,
Resident of C-841, NGOs Colony,
Vanasthalipuram, Hyderabad – 500 070

..... PETITIONER

AND

1. The Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi – 110 001 rep. by its Secretary.
2. The Chief Electoral Officer & Ex-Officio Principal Secretary to Govt., GAD (Elections-E) Dept., Secretariat Buildings, Secretariat, Hyderabad

.... RESPONDENTS

The address for the service of all notices and summons on the above named Petitioners is that of their counsel, Sri A.Ramalingeswara Rao, Advocate, 3-6-207/1, Maqdoom Marg, 15th Street, Himayatnagar, Hyderabad – 500 029.

For the reasons stated in the accompanying affidavit, the above named Petitioner prays that this Hon'ble Court may be pleased to issue any appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the guidelines in para 4 in Lr.No.37/AP-LC/2006-PLN III, dt.27.9.2006 issued by the 1st Respondent for enumeration for Graduate constituencies as illegal and void and consequently direct the respondents to accept the applications of its employees in bulk from any Gazetted Head of Office, Statutory Body, Corporation or Public Undertakings as was done in respect of Teachers and to accept certified copies of the recognized degrees/diplomas from Gazetted Officers in respect of others for registration in respect of Graduate constituencies for preparation of electoral rolls for A.P. Legislative Council

for its Graduates' Constituencies and pass such further orders as this Hon'ble Court may deem fit in the circumstances of the case.

Hyderabad

Date: 26.10.2006

COUNSEL FOR THE PETITIONER

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

W.P.NO. 22221 OF 2006

Between:

G.Rama Moorthy, S/o.Late: Chinnaiah,
Hindu, aged about 67 years, Business,
Resident of C-841, NGOs Colony,
Vanasthalipuram, Hyderabad-500070.

.. Petitioner

AND

1. The Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001 rep. by its Secretary

2. Chief Electoral Officer &
Ex-Officio Principal Secretary to Govt.,
GAD (Elections-E) Dept., Secretariat Bldgs.,
Secretariat, Hyderabad

.. Respondents

COUNTER AFFIDAVIT FILED BY THE RESPONDENT No.2

I, V.BHASKAR son of Venkataramany aged about 53 years,
working as Chief Electoral Officer & Ex.Officio Principal Secretary to Govt.,
General Administration (Elections-E) Department, Secretariat Bldgs.,
Secretariat, Hyderabad residing at Hyderabad, do hereby solemnly and
sincerely affirm and state as follows.

2. I am the 2nd respondent herein as such I am well acquainted with the
facts of the case. I have gone through the affidavit filed in support of the
writ petition and deny all the allegations made therein except those that are
specifically admitted hereunder.

3. In reply to para 3 of the affidavit filed by the petitioner, I submit that most of the assertions are extracts of A.P. Legislative Council Act, 2005 (Act 1 of 2006) with regard to the establishment of Legislative Council in the State of Andhra Pradesh and Division of seats among different constituencies as specified under the Act.

4. In reply to para 4 of the affidavit filed by the petitioner, I submit that the Election Commission in the guidelines has prescribed that the application in Form 18 must be supported by any one of the following five items of documentary evidence in support of educational qualifications of an applicant for enrollment to the graduate constituency:

- (a) The degree, diploma certificate in original granted by the university or institution concerned or any copy thereof duly self attested; or
- (b) copy of an entry in the Government record or a certificate issued to a Graduate employee by the Gazetted Head of Office on the basis of entries in Government records in his custody or a copy of an entry in the record of Statutory Bodies, Corporations or Public undertakings specifying the degree, diploma or certificate possessed by the claimant duly attested by the Head of the office concerned ; or
- (c) an attested copy of the card of registration as registered Graduate issued by the University, a certified copy of the relevant entry in the list of registered Graduates, the Roll of Advocates, the register of Medical Practitioners, the register of Chartered Accountants, the register of Engineers maintained by Institute of Engineers, etc.; or

(d) an affidavit by the claimant supported by certificate from the Registrar of a University, or the Principal of a College affiliated to University or from the Head of the Department of such College under whom he had studied; or

(e) the mark sheet in original granted by the university or Institution concerned or any copy thereof duly self attested, provided that there is clear indication there that claimant has passed the concerned examination.

5. In Para 4 (v) of the guidelines, the procedural verification is laid down:

(a) In cases where the applicant directly submits his application in person before the Designated Officer duly appointed for the purpose, he will produce the original degree/certificate/mark sheet before the Designated Officer. The Designated Officer will scrutinize the degree/certificate/mark sheet and after satisfying himself record either "*Verified with original and found correct*" or "*Verified with original and found not correct – Rejected*". The Designated Officer will then affix his signature, full name and PIN number on the application as mark of a summary enquiry and retain a photocopy (only attested by him) of the original document furnished by the applicant and forward the application to the Electoral Registration Officer.

(b) In cases where the application is sent by post to the Electoral Registration Officer/Assistant Electoral Registration Officer along with attested copies of the degree/certificate, the Electoral Registration Officer will forward the same to the Sub-Divisional Officer (SDO), incharge of the area where the applicant stays. The Sub-Divisional Officer will, in turn, issue a notice to the applicant to appear either before him or a Designated Officer appointed for the purpose in the

Sub-division, in person, along with his original certificate. Such notice will be issued by registered post or hand-delivered with proper acknowledgement due. On the appointed day of the hearing, the applicant will produce his original certificates and the Designated Officer will then proceed with his enquiry as per sub- para (a) above and affix his decision as laid down therein. The application will then be forwarded after completion of the enquiry by the Sub-Divisional Officer to the Electoral Registration Officer/Assistant Electoral Registration Officer concerned.

6. Para 4 (vi) of guidelines states that any application where original certificates have not been submitted, will be summarily rejected by the Electoral Registration Officer as incomplete. These stipulations have been made with a view to ensure correct enumeration of eligible voters and to prevent fraudulent claims.

7. The graduate is given a number of options to prove his eligibility of which production of original diploma is only one. Personal appearance is required only if the photo copy of diploma / marks sheet is submitted. If the other options are availed i.e., enclosing certificate from head of the office based on entries in Government records or Certificate of entry in record of Statutory bodies, Corporations or public undertakings etc., then personal appearance is not required. He can also send application by post. Personal appearance is not mandatory in case the individual follows the other options provided at para 4 (iii)(b),(c) & (d) of Election Commission of India guidelines which are extracted at Para 5 of the Counter Affidavit.

8. I submit that the prayer that the respondent can accept the applications for registration from individuals through their authorized representative is fraught with risks if bogus applications being received in bulk to the detriment of the purity of the electoral roll. Even in the preparation of Legislative Assembly rolls, no bulk applications are permitted through representatives.

9. The petitioner's prayer that instead of demanding the original, the Electoral Registration Officers can accept duly certified copy of the degree would give scope for non-genuine and bogus voters to be enrolled without there being any proper verification with reference to original. The extra precaution of verifying against the original has been taken to discourage enrollment through forged means by producing false documents, since on the basis of some court cases in the past some fake entries were detected in other States in Graduates' constituencies roll. Therefore, the Election Commission of India issued guidelines directing the individuals to produce original degree certificate along with application to verify the genuineness of it.

10. It is respectfully submitted that the door to door enrolment sought by the petitioner is not envisaged for in the enrolment of electors for council constituencies as provided in Part-IV of the Registration of Electors Rules, 1960. Graduates who form the electorate are assumed to have a high sense of civic duty to come forward and register as a voter after providing proof of eligibility.

11. Therefore, the procedure adopted has faithfully followed Part IV of Registration of Electors Rules, 1960 specially Rule 31. A liberal provision

has been made for the enrollment of graduates in the instructions contained in Para (4)(iii)(b), (c) & (d) of the guidelines quoted above for convenience of prospective voter wherein he need not personally appear before the Electoral Registration Officers while submitting his claim.

12. It is not correct to say that the instructions of the Election Commission have no statutory force and are contrary to the provisions of the Representation of Peoples Act, 1950 and Registration of Electors Rules, 1960. The petitioner is put to strict proof of this allegation.

13. The prayer that in case of an employed graduate the gazetted head of office, Statutory Body, Corporation or Public Undertaking forward applications in bulk as was done in the case of teachers is misleading. Such a procedure was not followed in the case of teachers. Both in the case of teachers as well as graduates bulk applications are not accepted. The only concession made in the case of teachers was that only heads of educational institutions (and not heads of other institutions) can forward applications in bulk. This was because the responsibility of certifying the eligibility of the voters of the Teachers constituency lies with the Head of the Institution and not with the voter seeking registration. Since the head of the educational institution necessarily has to certify the teachers application, he has also allowed to forward applications in bulk. The prayer made for graduates cannot be accepted for two reasons.

Firstly – teachers applications can be forwarded in bulk only by heads of educational institutions and not by authorized representatives or Gazetted head of office, Statutory Body, Corporation or Public Undertaking as prayed by the petitioners.

Secondly -- the petitioner while seeking parity between teachers and graduates has ignored a basic essential difference in these two classifications. Teachers are defined by their function – what they do. To certify their eligibility that they are teachers, the certificate of the head of educational institution is essential. Graduates are defined by their qualifications – what they are. To certify their eligibility, they need to produce evidence of their qualifications which has nothing to do with their function and the institution where they work. This is a very important difference between the two categories based on which different methodologies have been adopted for enumeration.

14. I submit that the teachers working in the institutions, the head of the educational institution has to certify that they are the teachers worked for 3 years in preceding 6 years period while sending Form-19 to satisfy the eligibility criteria. Therefore, the teachers are themselves is a different class than the graduates. The entire responsibility lies with the head of the institution, therefore no further verification is necessary. So far as graduates are concerned their original degree certificate has to be verified if a copy of self attested degree certificate / mark sheet is produced and also other modes are provided under the guidelines and there is no head of institution for all graduates.

15. The circular instructions in Govt. Memo No. 3597/Elecs.E/A2/2006-8, dated 10.10.2006 were issued based on the Election Commission of India's Letter No. 37/AP-LC-2006-PLN-III, dt.7.10.2006. While all eligible applicants for the teachers' constituency

will be teachers in the educational institutions not lower in standard than that of a secondary school, this provision covers all teachers. Teachers who are not employed, retired and outside the eligibility limit will no longer be teachers and will thus be not eligible. Graduates however will continue to be graduates even when unemployed and even after retirement, a graduate can enroll by following the eligibility criteria. Providing relief for a limited number of graduates as prayed for is not required for two reasons :-

Firstly – Graduates working in Statutory Bodies, Government Offices, Corporations or Public Undertakings can under existing provisions submit certificate of eligibility issued by their Head of Office along with the application in Form 18 and send it without personal appearance. No further verification will be required.

Secondly – the prayer does not address the large number of graduates who are not employed in such institutions, or are privately employed or self employed or unemployed. It may not be desirable to provide unrequired concessions to a portion of the graduates.

16. In reply to para 5 of the affidavit filed by the petitioner, it is submitted that the allegation that though there are nearly 25 lakhs graduates, nobody is voluntarily coming forward to register their names as electors is also incorrect. The comparative statement placed below shows the enrolment of graduate electors as mentioned by the petitioner and in actuality as on 20.10.2006:

Sl. No.	Name of the Constituency	No. of applications received as per the petitioner	No. of applications received as per the statistics

			received from the districts
1	Srikakulam-Vizianagaram-Visakhapatnam	341	3498
2	East-West Godavari	1300	4891
3	Krishna-Guntur	495	2511
4	Prakasam-Nellore-Chittoor	507	1629
5	Kadapa-Anantapur-Kurnool	Not indicated	3809
6	Mahabubnagar-Ranga Reddy-Hyderabad	942	1818
7	Medak-Nizamabad-Adilabad-Karimnagar	798	3634
8	Warangal-Khammam-Nalgonda	Not indicated	2322
	Total	4383	24112

It is seen that figures quoted by petitioner fall far short of actual figures.

17. As on 28.10.2006, the total applications received from graduates are 89,178 and the applications received from teachers are far less at 12,703. This clearly shows that the allegations that conditions for graduates enrolment is more cumbersome and different than teachers enrolment is not correct. It also shows that it is not the conditions of enrolment that determine the actual enrolment but the enthusiasm to register among graduates and teachers.

18. Thus the allegation that the lakhs of graduates who are eligible to be registered as electors in the State of Andhra Pradesh being deprived because of the restriction placed by the respondent to register their names as elector is also incorrect. Some individuals may be interested to enroll as electors and some may not. This depends upon their sense of civic duty and willingness to come forward to enroll as elector in response to the

notice issued in daily news papers on 29.9.2006, 16.10.2006 and 24.10.2006.

19. I submit that all liberal steps for registration of electors have been adequately provided under the guidelines and no individual had any grievance about it and we had already received a number of applications with the procedure described under Election Commission of India guidelines in Lr.No.37/AP-LC/2006-PLN III, dt.27.9.2006. The allegation that petitioner made 3 representations is incorrect. Only one representation dated 5.10.2006 is received by this office and the contents of the representation were examined and referred to the 1st respondent.

20. The allegation that the procedure adopted by the respondent would result an imperfect preparation of electoral roll for the ensuing elections to the graduate constituencies is nothing but a figment of imagination of the petitioner. This extra precaution has been taken to discourage the elements seeking enrollment through forged means by producing false documents, since on the basis of some court cases in the past some fake entries were detected in other State in Graduates' constituencies roll. Since the Constitution has provided an extra right to vote to Graduates category of voters, some strict measures are required to be taken to prepare the roll to make it as error-free as possible and to ensure that the representatives elected from this category are really elected by the voters of this category.

21. The procedure prescribed under the guidelines itself clarifies that if a head of institution certifies, in format prescribed, that the individual working under him is a graduate, there is no need to individual to submit

the original degree and personally appear before Electoral Registration Officer for verification. So far as professionals like Advocates, Medical Practitioners, Chartered Accountants, Engineers can file applications along with a certificate regarding relevant entries in the registers of their professional bodies indicating that the individual is a graduate. Such applications can be sent by post / in person and no verification of original degree is required. In such cases, the verification by the Designated Officer is dispensed with. The other categories which are not specified in the guidelines namely the unemployed graduates, graduates working in private and other organizations can not be fixed any responsibility, therefore to verify the genuinity of their degree certificates, the production of original degree certificate is being sought.

22. I submit that accepting the bulk applications from any gazetted head of office, Statutory body, Corporation or public undertaking may discriminate against the large number of graduates not working in such offices also may be privately employed, self-employed or unemployed. Therefore, all the graduates are treated as one class and a uniform procedure has been followed in order to avoid discrimination within the class.

23. I submit that the Registration of Electors Rules and the guidelines of the ECI which govern the enrolment of electors are uniform all across the country. It is not unique to Andhra Pradesh. The same are being followed in the States of Bihar, UP, Maharashtra & Karnataka which also have a bicameral legislature and there has been no occasion in these four States to change the guidelines as requested by the petitioner.

24. For the reasons stated above, it is therefore prayed that this Hon'ble Court may be pleased to dismiss the writ petition.

Deponent

Solemnly and sincerely affirmed,
on this the 30th day of 2006,
and signed his name in my presence.

Before me,

(Attestor)

VERIFICATION STATEMENT

I, V.BHASKAR, S/o. Venkataramany aged about 53 years, working as Chief Electoral Officer & Ex.Officio Principal Secretary to Government residing at Hyderabad and well acquainted with the facts do hereby verify and state that the contents of para (1) to (23) are true and correct to the best of my knowledge.

Verified at Hyderabad
On this the 30th day of October, 2006.

DEPONENT

Before me

(ATTESTOR)

Counsel for the Respondent:

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original jurisdiction)**

**TUESDAY, THE THIRTY FIRST DAY OF OCTOBER
TWO THOUSAND AND SIX**

**PRESENT
THE HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE
and
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

WRIT PETITION NO : 22221 of 2006

Between:

G.Rama Moorthy, S/o. Late Chinnaiah,
President of C-841, NGOs Colony, Vanasthalipuram, Hyderabad - 500 070.

.... PETITIONER

AND

1. Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi - 110 001 rep by its Secretary.
2. Chief Electoral Officer & Ex-Officio Principal Secretary to Govt., GAD(Elections-E) Dept., Secretariat Bldgs., Secretariat, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the guidelines in para 4 in Lr.No.37/AP-LC/2006-PLN III dt. 27-9-2006 issued by the 1st Respondent for enumeration for Graduate constituencies as illegal and void and consequently direct the respondents to accept the applications of its employees in bulk any Gazetted Head of Office, Statutory Body, Corporation of Public Undertaking as done in respect of Teachers and to accept certified copies of the recognized degrees/diplomas from Gazetted Officers in respect of other for registration of Graduate constituencies for preparation of electoral rolls of A.P.Legislative Council for its Graduates' Constituencies.

Counsel for the Petitioner : SRI A.RAMALINGESWARA RAO

Counsel for the Respondent No1. : SRI C.P.SARATHY

Counsel for the Respondent No2. : G.P. for General Admn.

The Court at the admission stage made the following : ORDER:-

Per G.S. SINGHVI, C.J.

The petitioner, who retired as Superintendent (Accounts Branch) from the office of the Director of Printing and Stationery, Hyderabad and is desirous of contesting election for membership of the Andhra Pradesh Legislative Council (for short, 'the Council') from the Graduates' Constituency of Mahabubnagar, Ranga Reddy and Hyderabad Districts, has filed this petition for quashing paragraph 4 of the guidelines

issued by Election Commission of India (respondent No.1). He has further prayed for issue of a direction to the respondents to accept the applications of the graduate employees in bulk from any Gazetted Head of Office, Statutory Body, Corporation or Public Undertaking and recognized professional bodies as is done in the case of teachers. Still further, he has prayed for issue of a direction to respondent No.2 to accept the copies of degrees etc. certified by the Gazetted Officers.

The complaint of the petitioner is that in view of the guidelines issued by respondent No.1, the concerned authorities are not accepting the certified copies of the degrees and are demanding original; that bulk applications sent by the Heads of the Institutions have been accepted for enrolment of voters of the teachers' constituencies, but similar action has not been taken in respect of the prospective voters of other constituencies and, in this matter, the members of the Graduates' Constituency are being discriminated.

In the counter-affidavit filed by him, Shri V. Bhaskar, Chief Electoral Officer and Ex-Officio Principal Secretary to Government, General Administration (Elections-E) Department, has detailed out the procedure for enrolment of voters and denied that any discrimination is being practiced against those seeking enrolment for Graduates' Constituency. In paragraph 7 of his affidavit, Shri Bhaskar has averred as under:

“7. The graduate is given a number of option to prove his eligibility of which production of original diploma is only one. Personal appearance is required only if the photo copy of diploma/marks sheet is submitted. If the other options are availed i.e. enclosing certificate from head of the office based on entries in Government records or Certificate of entry in record of statutory bodies, corporations or public undertakings etc., the personal appearance is not required. Personal appearance is not mandatory in case the individual follows the other options provided at para 4 (iii)(b), (c) & (d) of Election Commission of India guidelines which are extracted at Para 5 of the counter affidavit.”

In paragraph 13, he has denied that bulk applications were accepted from the voters of the Teachers' Constituency. According to him, the only concession made in the case of Teachers is that Heads of Institutions can forward the applications in bulk with a certificate that the teachers concerned have worked in the educational institution for a period of three years in preceding six years.

We have heard learned counsel for the parties. Article 171 of the Constitution contains provisions relating to composition of the Legislative Council. Clause(1) thereof declares that the total number of members in the Legislative Council of a State shall not exceed one-third of the total numbers in the Legislative Assembly of that State. In terms of Clause (3)(a) of Article 171, approximately one-third members of the Council are required to be elected by electorates consisting of members of Municipalities, District Boards and other Local Authorities, which may be specified by Parliamentary legislation. Sub-clause (b) of Clause (3) lays down that approximately one-twelfth members of the Council shall be elected by electorates consisting of persons residing in the State, who have been for at least three years graduates of any University in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by the Parliament as equivalent to that of a graduate of any such University. Sub-clause (c) of Clause (3) lays down that approximately one-twelfth members of the Council shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in educational Institutions within the State, not lower in standard than that of a secondary school. In terms of sub-clause (d) of Clause (3), approximately one-third of members of the Council are to be elected members of the Council are to be elected members of Legislative Assembly from amongst the persons who are not members of Assembly. The remaining members of the Council are to be nominated by the Governor in accordance with Clause (5). Clause (4) of Article 171 requires that the members to be elected under sub-clauses (a), (b) and (c) of Clause (3) shall be chosen from the territorial constituency prescribed by or under any law enacted by the Parliament. Election of such members is to be held in accordance with the system of proportional representation by means of a single transferable vote.

Part III of the Representation of the People Act, 1950 (for short, 'the 1950 Act') contains provisions for preparation of electoral rolls for Assembly Constituencies and Part IV contains provisions relating to electoral rolls of Council Constituencies. Clause (e) of Section 27(2), which finds place in Part IV of the 1950 Act, lays down that for the purpose of elections to the Legislative Council of a State in any 'Local Authorities' Constituency, the provisions of Sections 15, 16, 18, 22 and 23 shall apply. Likewise, sub-section (4) of Section 27 declares that the provisions of those Sections and Section 21 shall apply in relation to Graduates' Constituencies and Teachers' Constituencies. Sub-section (3) of Section 27 lays down that the State Government may, with the concurrence of Election Commission, specify the qualifications, which shall be deemed to be equivalent to that of a graduate of a University and the educational institutions within the State, which are not lower in standard than that of secondary school. Section 15 of the 1950 Act lays down that for every constituency there shall be an electoral roll prepared in accordance with the provisions of the Act under the superintendence, direction and control of the Election Commission. Section 16 specifies disqualifications

for registration in an electoral roll. Sections 17 and 18 lay down that no person shall be entitled to be registered in the electoral roll for more than one constituency and for any constituency more than once. Section 21 lays down the procedure for preparation and revision of electoral rolls, Section 22 lays down the procedure for correction of entries in the electoral rolls and Section 23 provides for inclusion of names in electoral rolls.

For the purpose of holding election to the Council, which was revived by the Andhra Pradesh Legislative Council Act, 2005, Election Commission of India (respondent No.1), vide its communication dated 27-9-2006 addressed to the Chief Electoral Officer of Andhra Pradesh (respondent No.2 herein) conveyed the guidelines for preparation of electoral rolls of the Council from its Graduates' and Teachers' Constituencies. Paragraph 2 and extracts of paragraphs 4 and 5 of the guidelines issued by respondent No.1, which have bearing on the decision of this petition, read as under:

“2. The revision of electoral roll of the concerned Graduates' and Teachers' Constituencies shall be undertaken with reference to 1st November 2006 as the qualifying date in accordance with the following programme -

S.No.	Activities	Period/Date
1.	Issue of public notice under Rule 31(3) of the Registration of Electors Rules, 1960.	29.09.2006 (Friday)
2.	First republication of notice in Newspapers under Rule 31(4)	16.10.2006 (Monday)
3.	Second republication of notice in Newspapers under Rule 31(4)	24.10.2006 (Tuesday)
4.	Last date of receipt of applications in Form 18 or Form 19 as the case may be	06.11.2006 (Monday)
5.	Period for the preparation of manuscripts and printing of draft roll	20.11.2006 (Monday)
6.	Draft publication of electoral rolls	22.11.2006 (Wednesday)
7.	Period for filling claims and objections	22.11.2006 (Wednesday)
8.	Date by which the claims and objections shall be disposed of and supplements be prepared and printed	27.12.2006 (Wednesday)
9.	Final publication of electoral rolls	29.12.2006 (Friday)

4. Procedure for enumeration for Graduates' Constituencies:-

(i) The Chief Electoral Officer should supply the updated list of qualifications equivalent to that of a Graduate specified by the State Government concerned for voters in the Graduates' constituencies of the respective EROs.

(ii) The eligibility of a person for enrolment in a Graduates' Constituency is to be determined having regard to provisions of Article 171 (3)(a) of the Constitution and Section 27(3)(a), 27(5)(a) and 27(6) of the R.P. Act, 1950. Accordingly, a person who has been, for at least three years before the qualifying date (01.11.2006), a graduate of any University in the territory of India or has been in

possession of equivalent qualifications prescribed in the list referred to in sub-para (i) above and is ordinarily resident of the constituency is entitled to be registered as an elector in a Graduates' Constituency.

(v) Every person making an application in Form 18 shall be required to furnish his degree or certificate or mark sheet, in original, in support of his eligibility as per the following procedure:-

- (a) In cases where the applicant directly submits his application in person before the Designated Officer duly appointed for the purpose, he will produce the original degree/certificate/ mark sheet before the Designated Officer. The Designated Officer will scrutinize the degree/ certificate / mark sheet and after satisfying himself record either "Verified with original and found correct" or "Verified with original and found not correct – Rejected". The Designated Officer will then affix his signature, full name and PIN number on the application as mark of a summary enquiry and retain a photocopy (only attested by him) of the original document furnished by the applicant and forward the application to the ERO.
- (b) In cases where the application is sent by Post to the ERO/ AERO along with attested copies of the degree/ certificate, the ERO will forward the same to the Sub-Divisional Officer (SDO), incharge of the area where the applicant stays. The SDO will, in turn, issue a notice to the applicant to appear either before him or a Designated Officer appointed for the purpose in the subdivision, in person, along with his original certificate. Such notice will be issued by registered post or hand-delivered with proper acknowledgement due. On the appointed day of the hearing, the applicant will produce his original certificates and the Designated Officer will then proceed with his enquiry as per sub-para (a) above and affix his decision as laid down therein. The application will then be forwarded after completion of the enquiry by the SDO to the ERO/AERO concerned.

5. Procedure for enumeration for Teachers' Constituencies :

- (i) The eligibility of a person for enrolment in a Teachers' constituency is to be determined having regard to the provisions of Article 171(3) (c) of the Constitution and Sections 27(3)(b), 27(5)(b) and 27(6) of the Representation of the People Act, 1950. Accordingly, a person shall be entitled to be registered as elector in a Teachers' Constituency, if (a) he has been engaged in teaching, within six years immediately before the qualifying date (1st November, 2006 in the present case), for a total period of three years, (b) he has been so engaged in teaching for the said period in any of educational institutions not lower in standard than that of secondary school, (c) such educational institutions not lower in standard than that of secondary school have been specified as such by the State Government, with the concurrence of the Election Commission, by

notification in the official gazette, and (d) the person concerned is ordinarily resident within the territorial extent of the Teachers' Constituency in which he seeks enrolment.

(v) Every application in Form 19 by a person seeking enrolment in Teachers' Constituency shall be accompanied by a certificate from the Head of the educational institution certifying the engagement of the person concerned as a teacher for a total period of three years within the last preceding six years against a sanctioned post. The format for the certificate will be as follows:-

`CERTIFICATE`

This is to certify that Shri/ Smt. / Kum. _____ has been teaching in _____ (name of the institution) for a total period of three years within the last preceding six years, as shown below against a sanctioned post on regular/ adhoc* basis.

2 (a) * As per the records of the Institution, he/she has been engaged in this institution continuously from _____ (date) to _____ (date)

OR

(b) As per the records of the institution, he/she has been engaged in this institution for the following period of services:-

From _____ to _____
From _____ to _____
From _____ to _____

(Signature, Name & Seal of the Head of the Institution)
(*Strike out whichever is not applicable)

(vi) The certificate of the Head of the educational institution in the above format should be considered enough by the ERO to determine the eligibility of the applicant.

(vii) Applications in bulk whether submitted in person or by post, shall not be considered for inclusion by the ERO."

A reading of the guidelines reproduced above makes it clear that for being enrolled in a Graduates' Constituency, the applicant must have been, for at least three years before the qualifying date i.e., 01.11.2006, a graduate of any University in the territory of India or must possess equivalent qualification. He should also be ordinary resident of the constituency. The applicant is required to submit application in Form No. 18 and furnish his degree or mark sheet in original. If the applicant directly submits the application before the designated officer, then he must produce original/ certificate/ mark sheet. After scrutiny thereof, the designated officer is required to make a note of verification or rejection thereof. Where the application is accepted, the designated officer is required to return the original after retaining Photostat copy. If the application is

sent by post, then the Electoral Registration Officer or Assistant Electoral Registration Officer is required to send the same to the concerned Sub-Divisional Officer. The latter is required to issue notice to the applicant to appear either before him or the designated officer along with the original certificates. After verifying the certificates, the concerned officer or the designated officer has to adopt the same procedure as is followed when the applicant appears in person. In case of Teachers' Constituencies, the application is required to be made in Form No. 19. Such application must be accompanied by a certificate from the Head of the educational institution certifying the engagement of the person concerned as a teacher for a period of three years within the last preceding six years against a sanctioned post.

There is nothing in the aforementioned guidelines from which it can be inferred that any discrimination has been practiced between those seeking enrolment in the Graduates' Constituency vis-avis those seeking enrolment in the Teachers' Constituency. The ambiguity, if any, was clarified by the Election Commission vide its letter dated 7-10-2006 sent in response to D.O. letter dated 3-10-2006 of respondent No. 2. The relevant extract of that letter reads as under:

“Issue No. 2 Verification for Graduates Constituency

In the cases covered by para 4(iii)(b) of the Guidelines where the claim is supported by a copy of an entry in the Government record or a certificate issued to a Graduate employee by the Gazetted Head of Office on the basis of entries in Government records in his custody or a copy of an entry in the record of Statutory Bodies, Corporations or Public Undertakings specifying the degree, diploma or certificate possessed by the claimant duly attested by the Had of the Office concerned, further verification by the Designated Officer may be dispensed with. In other cases, where only the attested copies of the card of registration/ certificate issued by the University/ College and other institutions mentioned in para 4(iii) (c) & (d) are furnished by the applicant instead of the original certificates/ registration cards, then the same are required to be verified by the Designated Officer.”

The provision for submission of bulk applications by educational institutions was made only vide Memo dated 10-10-2006 issued by Government of Andhra Pradesh, Paragraph (x) of that memo reads as under :

“(x) Submission of bulk applications by Educational Institutions :

Educational Institutions can directly send Form 19 certifying the eligibility of the applicant. Each of these applications must be accompanied by a certificate from the head of the educational institution in the format prescribed by the Commission. Further, the application should be forwarded by the Head of the

Educational Institutions through a forwarding letter signed personally by him along with the list of the applicants.

The applications in bulk cannot be accepted from any institution head other than an educational institution.”

The aforementioned provision does not, in any manner, detract from paragraph 7 of the guidelines issued by the Election Commission, which clearly prohibit consideration of the applications made in bulk for inclusion in the electoral roll. Therefore, the grievance made by the petitioner that the members of the Graduates' Constituency have been discriminated cannot but be treated as un-substantiated. That apart, the petitioner has not produced any tangible evidence on the record of the writ petition to show that the respondents have accepted bulk applications sent by any particular educational institution and enrolled the applicants in the Teachers' Constituency without regard to the basic qualifications. Therefore, the complaint made by the petitioner that he has been discriminated is liable to be declared as illusory and the same cannot be entertained for passing an order which may impede the process initiated by the respondents for holding election to the Legislative Council.

With the above observations, the writ petition is dismissed.

AS a sequel to dismissal of the writ petition, WPMP No. 28217 of 2006 filed by the petitioner for interim relief is also dismissed.

Sd/-, S.T. VENUGOPALA CHARI
ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Election Commission of India, Nirvachan Sanda, Ashoka Road, New Delhi – 110 001 rep by its Secretary
2. The Chief Electoral Officer & Ex-Officio Principal Secretary to Govt., GAD (Elections-E) Dept., Secretariat Bldgs., Secretariat, Hyderabad.
3. Two CC G.P. for General Admn. High Court of A.P., Hyderabad.
4. Two CD Copies
5. Sri A. Ramalingeswara Rao, Advocate (O.P.U.C.)
6. Sri C.P. Sarathy, Advocate (O.P.U.C.)