

BOULLE v GOVERNMENT OF SEYCHELLES

(2011) SLR 235

Petitioner present in person
R Govinden for the respondents

Judgment delivered on 12 July 2011

Before Karunakaran Ag CJ, Renaud, Dodin JJ

KARUNAKARAN J: By an amended petition dated 15 March 2011 the petitioner prayed this Court to declare:

1. That Section 5 of the Elections Act is unconstitutional:-
 - i. to the extent that it provides for only voters resident in a district to have a right to be registered as a voter.
 - ii. To the extent that Section 5(b) stipulates that a person is disqualified from registration and voting if he is detained at the pleasure of the President.
 - iii. To the extent that Section 5(c) provides that a citizen of age is disqualified from registering as a voter when serving a term of imprisonment.
2. That Section 6(b) is unconstitutional and null and void.
3. That there is no residency criteria whatsoever for a citizen to register and vote at an election.

Sections 5, 5(b), 5(c) and 6(b) of the Elections Act (“the Act”) are reproduced hereunder for ease of reference.

Section 5, 5(b), 5(c):

5.(1) Every citizen of Seychelles entitled to be registered as a voter under article 114 of the Constitution shall, if the citizen resides in an electoral area, be registered as a voter in that electoral area unless the citizen ;

- (a) is disqualified from registering as a voter under this Act or any other written law;
- (b) is under any written law, adjudged or otherwise declared to be of unsound mind or detained as a criminal lunatic or at the pleasure of the President;
- (c) is serving a sentence of imprisonment of or exceeding six months imposed by a court in Seychelles.

Section 6(b):

Every person registered as a voter in an electoral area is entitled to vote, in accordance with this Act, at an election or at a referendum in the electoral area unless –

- (b) the person is serving a sentence of imprisonment or being detained under any written law.

Section 5(1) makes reference to article 114 of the Constitution.

Article 114(1) states:

A person who is a citizen of Seychelles and has attained the age of 18 years is entitled to be registered as a voter unless the person is disqualified from registration under an Act on the ground of ;

- a) infirmity of mind;
- b) criminality;
- c) residence outside Seychelles.

The petitioner supported his application by an affidavit of the facts upon which he relied.

The following material facts contained in the petitioner's affidavit are not disputed by the respondents.

The petitioner is a seychellois over 18 years old and has a right to be registered as a voter under article 24(1)(b) and 114 of the Constitution. In terms of his entitlement for registration as a voter under the Constitution, the petitioner is duly registered as a voter. The petitioner is a person entitled under article 24(1)(c) and 51(1) of the Constitution to stand as a candidate at a presidential election. The petitioner intends to stand as a candidate for the next presidential election which is due to take place this year in accordance with Article 4 of Schedule 3 to the Constitution and the electoral commissioner has fixed the date for the said election and announced that it shall be held on the 19th, 20 and 21 May 2011. The respondent had also participated in the 2001 and 2006 Seychelles presidential elections as presidential candidate held under the Elections Act 1995. The right of a citizen to be registered as a voter is enshrined in article 24(1) of the Constitution which provides that subject to the Constitution, every citizen of Seychelles who has attained the age of eighteen years has a right

- a) to take part in the conduct of public affairs either directly or through freely chosen representative;
- b) to be registered as a voter for the purpose of and to vote by secret ballot at public elections which shall be by universal and equal suffrage;
- c) to be elected to public office; and
- d) to participate, on general terms of *equality, in public service*.

Article 114(1) of the Constitution provides that a person who is a citizen of Seychelles and has attained the age of eighteen years is entitled to be registered as a voter unless the person is disqualified from registration under an Act on the ground of –

- a) infirmity of mind;
- b) criminality;
- c) residence outside Seychelles.

The right of a citizen to vote is also enshrined in article 113 of the Constitution which provides that a citizen of Seychelles who is registered as a voter in an electoral area shall be entitled to vote, in accordance with law, in the electoral area –

1. at an election for the office of President;
2. at an election of the members of the National Assembly; or
3. in a referendum held under this Constitution.

Unless any circumstances have arisen which, if the citizen were not so registered, would cause the citizen to be disqualified under an Act made under articles 114(1) on ground (a) ground (b) of articles 114(1).

The Elections Act provides under section 5(1) that every citizen of Seychelles entitled to be registered as a voter under article 114 of the Constitution shall, if the citizen resides in an electoral area, be registered as a voter in that electoral area unless the citizen:

1. is disqualified from registering as a voter under this Act or any other written law;
2. is under any written law, adjudged or otherwise declared to be of unsound mind or detained as a criminal lunatic or at the pleasure of the President;
3. is serving a sentence of imprisonment of or exceeding six months imposed by a court in Seychelles.

Section 6 of the Elections Act provides that every person registered as a voter in an electoral area is entitled to vote, in accordance with this Act, at an election or at a referendum in the electoral area unless:

1. any circumstances, other than the fact that the person no longer resides in the electoral area, have arisen which if the person were not registered as a voter would cause the person to be disqualified under section 5(1)(a), (b) or (c);
2. the person is serving a sentence of imprisonment or being detained under any written law.

The facts in dispute are, firstly, that according to the petitioner it is clear from article 24(1)(b) as read with article 113 that article 113 only intends to provide for the place where the voter can cast his/her vote and furthermore there is no requirement for residency in Seychelles to register as a voter and residency is totally irrelevant for exercising a right to vote in terms of which no law can provide otherwise.

To the above averment, the respondent responded by stating that article 24(1)(b) and article 113 of the Constitution has to be read in the light of article 114(1)(c) together with article 24(2) of the Constitution which when read together makes it clear that residency by a citizen in Seychelles is a constitutional requirement in order for a citizen of Seychelles to be registered as a voter and it is averred further that articles 24(1)(b) and article 113 provides for more than for the place where the voter can cast his/her vote. Article 113 creates the right to vote.

Secondly, the petitioner averred that it is unconstitutional for the Elections Act to provide under section 5 thereof that residence in an electoral area is the sole ground for a citizen to be eligible for registration as a voter, as it violates the right of registration under article 24(1)(b) and 114 of the Constitution.

The respondent contended that section 5 of the Elections Act is properly drafted and is perfectly constitutional as article 24(1) of the Constitution is subject to the provisions of article 114 of the Constitution. In other words the right to vote and to be registered as a voter is subject to the voter being constitutionally qualified to be registered as a voter in accordance with the said provisions and conditionalities of article 114. The right to vote is not an absolute right.

The respondent went on to state moreover that section 5 of the Elections Act does not provide for residency as a sole ground for a voter to be eligible for registration as a voter. On the contrary, section 5 clearly provides for all the grounds of eligibility for registration as a voter and it refers directly to article 114 of the Constitution. The provisions read inter alia as "Every citizen of Seychelles entitled to be registered as a voter under article 114 of the Constitution shall ... be registered as a voter." There are no provisions in section 5 of the Elections Act that unconstitutionally curtail or limit the constitutional entitlements to be registered as a voter.

Thirdly, the petitioner averred that section 5 of the Elections Act is unconstitutional to the extent that it deprives citizens who are not resident in a district at the time of preparation of the Electoral Register from exercising their right to register.

The respondent responded that article 114(1)(c) of the Constitution provides that a person is disqualified from being registered as a voter under the Elections Act if the person resides outside Seychelles.

The respondent added that resident outside Seychelles at the time of preparation of the Electoral Register under 24(1)(b) and article 114 of the Constitution as read with the provisions of the Elections Act ipso facto means not being resident in a district or electoral area of Seychelles at the time of the preparation of the said register, as the citizen cannot reside both inside and outside Seychelles at the same time.

The respondent also stated that the Elections Act is a law necessary in a democratic society made to regulate the right to participate in government in accordance with article 24(1) of the Constitution. The provision for annual preparation of the Electoral Register is an exercise which is made in pursuant to article 114 of the Constitution.

Fourthly, the petitioner averred that there is a lack of an enabling provision to allow citizens who do not reside in a district at the time of preparation of the Electoral Register to register, be it by registering in the district of their last residence or some other criteria that will ensure their right to register and vote as enshrined in article 24(1)(b), 113 and 114 of the Constitution is guaranteed.

It is the position of the respondent that if a citizen is residing in Seychelles he/she would have to be residing in one of the electoral areas in Seychelles. Section 5 and section 6 of the Elections Act are a sufficient enabling mechanism which allows a person to be registered in the electoral area where the person resides. The Electoral

Commissioner pursuant to the provision of article 24(1)(b), article 113 and article 114 of the Constitution and also in pursuant to the provision of section 8 to 10 of the Elections Act ensures that, if upon objection being made by any person it is found that a citizen does not reside in a certain electoral area, a hearing is conducted after due investigation and the said person then be registered in the area that he/she actually resides.

Fifthly, the petitioner averred that section 5(1)(b) of the Elections Act is unconstitutional to the extent that it disqualifies a citizen from registration and voting if he is detained “at the pleasure of the President”, as such restriction is not permissible under article 114(1) of the Constitution.

The respondent countered by stating “criminality” is a ground for disqualification from being registered as a voter in accordance with article 114(1)(b) and accordingly a person under lawful detention will not have a right to be registered as a voter. Moreover “infirmity of the mind” is also a ground for disqualification to be registered as a voter in pursuant to article 114(1)(a) of the Constitution. A detainee is detained at the pleasure of the President if found guilty and insane in accordance with section 138 of the Criminal Procedure Code. Under the provision of this law the President is entitled to order a criminal lunatic to “be confined in a mental hospital, prison or other suitable place of safety” upon the court adjudging such a person to be a criminal lunatic.

Sixthly, the petitioner averred that section 5(1)(c) of the Elections Act is unconstitutional as it deprives citizens of age from exercising their right to register as a voter or vote if serving a period of imprisonment.

It is the response of the respondent that “criminality” is a ground for constitutionally denying a citizen a right to vote. The Elections Act has inter alia defined “criminality” to be a state in which a person is serving a sentence of imprisonment of or exceeding six months imposed by a court in Seychelles thus certain prisoners falling in this category are denied being registered as a voter. It averred that this limitation is a limitation which exists in many countries with the same democratic constitutional set-up as the Republic of Seychelles. Those prisoners have been denied their liberties by a court after a fair hearing has been conducted. An aspect of their liberties that have been curtailed is their liberty to vote. Moreover, the disqualification enhances civil responsibility and respect of the rule of law and the general purpose of criminal sanction.

The respondent added that the presumption of innocence is restricted to the purpose of the subject’s right to a fair hearing as set out in article 19 of the Constitution and it does not guarantee the suspected citizens a right to vote especially in light of article 114 of the Constitution.

The respondent also stated that the curtailing of the right of prisoners to vote is accordingly legitimate, reasonable and is justifiable, particularly in a country like Seychelles where there is a strong feeling against high level crime. This measure therefore meets the minimum impairment test and the requirement of proportionality between the right of society to curb criminal actions and the right of the prisoners to vote at the time of preparation of the Electoral Register.

Seventhly, the petitioner averred that in light of article 113 of the Constitution, the entire section 6(b) of the Elections Act is unconstitutional as it introduces a restriction for voting which is different from the restriction for registration, which is not permissible under the said article 113, and furthermore it introduce a frivolous restriction in violation of article 113 of the Constitution, to prevent constitutionally innocent citizens who are detained from exercising their constitutional right to vote.

The response of the respondent is that section 6(b) of the Elections Act is constitutional as it introduces a restriction for voting which is based on a restriction for registration existing in the Constitution on the ground of “criminality” pursuant to article 114(1)(b) of the Constitution and the respondent repeated its response on that issue made earlier.

Eighthly, the petitioner averred that his right to be elected to public office under article 24(1)(c) of the Constitution is likely to be violated in consequence of the abovementioned provisions of the Elections Act.

To the above averment, the respondent stated that the right of the petitioner to be elected to public office as guaranteed under article 24(1)(c) of the Constitution is not infringed by the different provisions of the Elections Act impugned in the petition.

The petitioner argued his case in person and made extensive viva voce submissions in support of the averments contained in his petition.

The Attorney-General appeared for the respondents and likewise responded to arguments advanced by the petitioner on the contentious points and submitted his counter-arguments on those points.

In addressing the contentious issues, this Court has taken into consideration the voluminous oral submissions made by the parties. Those submissions are indeed very helpful to this Court in adjudicating those issues and this Court is grateful for contributions made by the parties in their respective presentations.

As a matter of principle, this Court when considering constitutional matters limits itself to interpreting the provisions of the Constitution of the Third Republic of Seychelles as proclaimed and accordingly applied its provisions to the matter or matters in issue. It is not for this Court to determine the merits or demerits of any constitutional provisions as this Court has no powers as such to rewrite the Constitution. In interpreting any constitutional provisions this Court does not go into legal gymnastics in order to give meaning to any ambiguous provisions or to ascribe meaning to constitutional provisions which are otherwise clear and unambiguous.

A Constitution is said to be a living document and as such its provisions are given realistic, reasonable and practical interpretation in order that all its provisions are made coherent and applicable.

This Court will now address the contentious matters in issue as set out above.

First Issue

Article 24 of the Constitution provides that subject to the Constitution, every citizen of Seychelles who has attained the age of eighteen years has a right to be registered as a voter for the purpose of and to vote by secret ballot at public elections which shall be by universal and equal suffrage. The right given under this article is not to be read or interpreted in isolation as it is subject to other provisions of the Constitution itself. This court will have therefore to read and interpret this provision in light of other relevant constitutional provisions. The pertinent provisions are those contained in articles 113 and 114.

It is our considered opinion that article 24 of the Constitution provides for exactly what it states in plain words that - subject to the Constitution, every citizen of Seychelles who has attained the age of eighteen years has a right to be registered as a voter for the purpose of and to vote by secret ballot at public elections. In other words this article of the Constitution invests a citizen of Seychelles with a right to register and vote at any election or referendum held in Seychelles.

Article 113 of the Constitution provides that a citizen of Seychelles who is already registered as a voter (under article 24) in an electoral area shall be entitled to vote, in accordance with law, in that particular electoral area, unless circumstances have arisen which, if he/she was not so registered, would cause him/her to be disqualified under an Act made under article 114(1) on the specified grounds.

It is our considered opinion that article 113 is simply making reference to a citizen of Seychelles who has already been registered to have the right to go and vote at that particular electoral area in which he had already registered himself for that purpose. However, since the time of his/her registration certain intervening events could have occurred which would have disqualified him/her to actually vote on the day of election. These intervening events could not be more than what are provided for in article 114 - namely, infirmity of mind, criminality, or residence outside Seychelles.

Turning now to article 114, it is our considered opinion that this constitutional provision is to the effect that a citizen of Seychelles who has attained the age of 18 years is entitled to be registered as a voter (under article 24) unless he/she is disqualified by law from doing so. The law that disqualifies him/her can do so only on 3 specific grounds, namely - infirmity of mind, criminality or residence outside Seychelles.

Second Issue

The petitioner advanced the argument that it is unconstitutional for section 5 of the Elections Act to provide that residence in an electoral area as the sole ground for a citizen to be eligible for registration as a voter, as it violates the right of registration under articles 24(1)(b) and 114 of the Constitution.

The respondent's argued that section 5 of the Elections Act is constitutional as article 24(1) is subject to the provisions of article 114 of the Constitution in that the right to vote and to be registered as a voter is subject to the voter being constitutionally qualified to be registered as a voter in accordance with the provisions of article 114.

The respondent further argued that section 5 of the Elections Act does not provide for residency as a sole ground for a voter to be eligible for registration but on the contrary, it provides for all the grounds of eligibility for registration as a voter and that Section refers directly to article 114 of the Constitution.

It is our considered opinion that section 5 of the Elections Act intends to set out in the constitutional provisions of article 114, in particular, that every citizen of Seychelles who is entitled to be registered as a voter under article 114 shall be registered as a voter in that electoral area unless that citizen is disqualified. It sets out that a citizen is disqualified from registering as a voter if he/she is so disqualified under the Elections Act or any other written law; or is under any written law, adjudged or otherwise declared to be of unsound mind; or detained as a criminal lunatic; or is detained at the pleasure of the President; and/or is serving a sentence of imprisonment of or exceeding six months imposed by a court in Seychelles.

The petitioner is not taking issue with what is immediately set above as our opinion, but with the phrase –“if that citizen resides in an electoral area”. He contends such condition is neither written in nor envisaged by article 114 of the Constitution.

It is evident that nowhere in article 114 of the Constitution is the phrase -“if that citizen resides in an electoral area” – mentioned. It is our considered opinion that for a citizen to exercise his/her right to register has to have a physical point or place where he/she would like to exercise his right to vote. In our opinion it is trite that a citizen cannot but be at least staying somewhere where he/she has an abode of some sort. Our interpretation of the phrase –“if that citizen resides in an electoral area” – can only be given a single and simple meaning for the purpose of article 114 of the Constitution and that is – a citizen who wants to exercise his right to be registered as a voter has to provide his address or place of abode in Seychelles when he/she wants to be so registered. For this reason we do not find the provisions of section 5 of the Elections Act to offend the provisions of article 114 of the Constitution and hence in our judgment that provision of law is therefore not unconstitutional.

Third Issue

Having made our findings and conclusions as set out above on the second issue which concerns the constitutionality of section 5 of the Elections Act, for the same reasons we are of the opinion that the petitioner’s averment that section 5 of the Elections Act is unconstitutional to the extent that it deprives citizens who are not resident in a district at the time of preparation of the Electoral Register from exercising his right to register, has no merit.

The respondent’s submission that article 114(1)(c) of the Constitution provides that a person is disqualified from being registered as a voter under the Elections Act if that person resides outside Seychelles, and also, that resident outside Seychelles at the time of preparation of the Electoral Register under article 24(1)(b) and 114 of the Constitution as read with the provisions of the Elections Act ipso facto means not being resident in a district or electoral area of Seychelles at the time of the preparation of the said register, as the citizen cannot reside both inside and outside Seychelles at the same time.

With respect, we are not in total agreement with those submissions to the extent that we are of the opinion that a citizen of Seychelles may have a residence both in Seychelles and outside Seychelles. In such a situation we are of the considered opinion that that citizen may register as a voter in Seychelles. Indeed many persons who have acquired Seychellois citizenship have also retained their citizenship of origin thus holding dual nationality and they exercise their voting right in both countries. The person has only to be in Seychelles for a period of three months prior to his/her seeking to be registered, in order to comply with the Elections Act.

Fourth Issue

To the averment of the petitioner that there is a lack of an enabling provision to allow citizens who do not reside in a district at the time of preparation of the Electoral Register to register, be it by registering in the district of their last residence or some other criteria that will ensure their right to register and vote as enshrined in article 24(1)(b), 113 and 114 of the Constitution is guaranteed, we are of the considered opinion that this averment has been addressed in our opinion expressed earlier. A citizen has only to declare where he has his abode, or where he stays or where he lives in Seychelles, and that in our opinion is sufficient to entitle him/her to be registered. Obviously, the Electoral Commissioner pursuant to the provisions of article 24(1)(b), 113 and 114 of the Constitution and also pursuant to the provisions of sections 8 to 10 of the Elections Act ensures that, if upon objection being made by any person it is found that a citizen does not reside in a certain electoral area, a hearing is conducted after due investigation and the said person will then be registered in the area that he/she actually resides.

Fifth Issue

The petitioner averred that section 5(1)(b) of the Elections Act is unconstitutional to the extent that it disqualifies a citizen from registration and voting if he/she is detained “at the pleasure of the President”, as such restriction is not permissible under article 114(1) of the Constitution. When making his viva voce submissions, the respondent conceded in that the word “or” in that provision of the Elections Act ought not to have been there and that legislative provision, until it is amended, should be read and interpreted – “is under any written law, adjudged or otherwise declared to be of unsound mind or detained as a criminal lunatic at the pleasure of the President”.

The Office of the Attorney-General is urged as a matter of urgency to have the obsolete word –“or” – to be accordingly deleted from that paragraph of the Elections Act.

Whether “criminality” is a ground for disqualification from being registered as a voter in accordance with article 114(1)(b), in our considered opinion, is a matter of policy and not necessarily legal in nature. If the State is of the view that “criminality” ought to be a ground for disqualification for registration as a voter, we believe that it is at liberty to do so.

However, the legal issue for this Court to determine is what “criminality” entails. In our considered opinion “criminality” is to be interpreted in its strictest sense as provided by the Constitution. A person is considered to be innocent until is proved or has been found guilty by a Court of law after due legal process (see article 19(2)(a)).

Hence, criminality will have to be based only on that constitutional principle and unless and until a person has gone through that process he/she cannot be deemed to be a criminal. In that context, a person who is under lawful detention cannot be assimilated to a criminal and his right to be registered as a voter is not fettered in any way.

“Infirmity of the mind” is also a ground for disqualification to be registered as a voter in pursuant to article 114(1)(a) of the Constitution. A person may be lawfully detained at the pleasure of the President, in accordance with section 138 of the Criminal Procedure Code, if he is found guilty of a criminal offence and is found to be insane. Under the provision of this law the President is entitled to order a criminal lunatic to “be confined in a mental hospital, prison or other suitable place of safety” upon the court adjudging such a person to be a criminal lunatic. We found that this is constitutional.

Sixth Issue

The petitioner averred that section 5(1)(c) of the Elections Act is unconstitutional as it purportedly deprives citizens of age from exercising their right to register as a voter or to vote if serving a period of imprisonment.

It is our considered opinion that “criminality” is a ground for constitutionally denying a citizen a right to vote. The Elections Act has inter alia defined “criminality” to be a state in which a person is serving a sentence of imprisonment of or exceeding six months imposed by a court in Seychelles. The right to be registered as a voter and to vote at an election by a category of prisoners falling in this category may, as a matter of policy be lawfully and constitutionally curtailed. As we opined earlier, this is matter of policy which is to be determined by the State. Such limitation exists in many States with the same democratic constitutional set up as the Republic of Seychelles. Those prisoners have been denied their liberties by a court after a fair hearing has been conducted. An aspect of their liberties that have been curtailed is their liberty to vote. Moreover, the disqualification enhances civil responsibility and respect of the rule of law and the general purpose of criminal sanction.

It is our view that the curtailing of the right of prisoners to vote is not necessarily unreasonable and unjustifiable, particularly in a country like Seychelles where there is a strong feeling against high level crime. This measure may be considered a minimum impairment test and the requirement of proportionality between the right of society to curb criminal actions and the right of the prisoners to vote at the time of preparation of the Electoral Register in which they reside in pursuant to the provision of the Elections Act.

Seventh Issue

The petitioner averred that, in light of article 113 of the Constitution, the entire section 6(b) of the Elections Act is unconstitutional as it introduces a restriction for voting which is different from the restriction for registration, which is not permissible under the article 113, and furthermore it introduces a frivolous restriction, in violation of article 113 of the Constitution, to prevent constitutionally innocent citizens who are detained, from exercising their constitutional right to vote.

Article 113 states that –

A citizen of Seychelles who is registered as a voter in an electoral area shall be entitled to vote, in accordance with law, in the electoral area –

1. at an election for the office of President;
2. at an election of the members of the National Assembly; or
3. in a referendum held under this Constitution,

unless any circumstances have arisen which, if the citizen were not so registered, would cause the citizen to be disqualified under an Act made under article 114(1) on ground (a) ground (b) of articles 114(1).

Section 6(b) of the Elections Act states:

Every person registered as a voter in an electoral area is entitled to vote, in accordance with this Act, at an election or at a referendum in the electoral area unless:

(a)...

(b) the person is serving a sentence of imprisonment or being detained under any written law.

It is our considered opinion that section 6(b) of the Elections Act is not unconstitutional. We view that section as a provision of law which simply introduces a restriction for voting which is based on a restriction for registration existing in the Constitution on the ground of “criminality” pursuant to article 114(1)(b) of the Constitution. We here repeat our opinion stated earlier on this issue.

Eighth Issue

The Petitioner averred that his right to be elected to public office under article 24(1)(c) of the Constitution is likely to be violated in consequence of the abovementioned provisions of the Elections Act.

We are of the considered opinion that the right of the petitioner to be elected to public office is guaranteed under article 24(1)(c) of the Constitution and is therefore not infringed by the different provisions of the Elections Act as impugned in the petition.

Conclusion

In deciding all the above issues, this Court has not been unduly influenced by considerations as to what the law should be as opposed as to what the law, even if found to be distasteful, actually is. We have set out what we have judged to be unconstitutional and needs to be remedied.

This Court is aware that the State is actually in the process of revising constitutional provisions relating to electoral management in Seychelles as well as revisiting the existing electoral laws. It is an opportune occasion for matters raised in the petition to be given consideration as a matter of policy to be eventually incorporated in the revised electoral legislation if found to be appropriate.

In the final analysis, for the reasons stated hereinbefore, we make the following findings and declarations in relation to the prayers of the petitioner in this matter:

1. We find that section 5(1) of the Elections Act, where it stipulates that only a resident in a district shall have a right to be registered as a voter is not unconstitutional in the circumstances;
2. We declare that section 5(1)(b) of the Elections Act is unconstitutional and so void to the extent wherein it stipulates that a citizen is disqualified from registration as a voter if he is detained at the pleasure of the President, as it contravenes article 114(1) and 4(1)(b) of the Constitution;
3. We find that section 5(1)(c) of the Elections Act, wherein it stipulates that a citizen of age is disqualified from registering as a voter when serving a term of imprisonment is not unconstitutional in the circumstances;
4. We declare that section 6(b) of the Elections Act is unconstitutional and void only to the extent that it stipulates that a person registered as a voter shall not be entitled to vote if he is being detained under any written law, as it contravenes article 113 of the Constitution;
5. We find that there is, for the time being, established by the Elections Act (as amended) a legal residency criterion for a citizen to register and vote at an election.

Having thus declared on the issue of constitutionality of the above provisions of law under the Elections Act, we hereby direct the Registrar of the Supreme Court to forward a copy of this Declaratory Judgment to the President of the Republic and the Speaker of the National Assembly in conformity with article 130(5) of the Constitution.

We make no order as to costs.