



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.01.2018

DELIVERED ON : 12.01.2018

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CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

W.P(MD)No.331 of 2018

K.K.Ramesh

... Petitioner

Vs.

1.The Government of India,
represented by its
Home Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

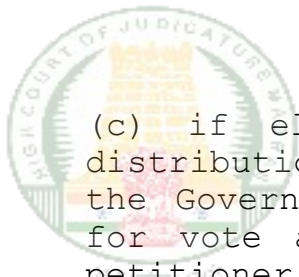
2.The Government of India,
represented by its
Secretary,
Ministry of Law and Justice,
Shastri Bhawan,
New Delhi - 110 115.

3.The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001.

4.The Chief Election Officer (CEO),
Tamil Nadu,
Fort St. George,
Secretariat,
Chennai - 600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to issue a notification to the effect that (a) Life imprisonment will be imposed for candidate who pay cash for vote in any future elections in India; (b) Life imprisonment will be imposed to the voters who receive the cash and they should not cast their votes in future elections in India and all Voter I.D. cards would be seized from them and their names would be deleted from the voters list; and



(c) if election is postponed or cancelled for the reason of distribution of cash for vote, the huge money spent for election by the Government will be recovered from the candidate who pays cash for vote and backed up with political party, by considering the petitioner's representation dated 12.12.2017.

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For Petitioner : Mr.K.K.Ramesh
[Party-in-Person]

For Respondents : Mr.V.Kathirvelu,
Assistant Solicitor General of India
assisted by Mr.S.Jeyasingh,
Central Government Standing Counsel
for R.1 & R.2

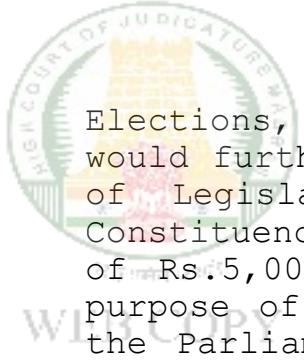
Mr.K.K.Senthil
for M/s.G.R.Associates for R.3 & R.4

ORDERM.SATHYANARAYANAN, J.

The petitioner, as party-in-person, has filed this "Public Interest Litigation", praying for appropriate direction or any suggestion or observation or particularly, in the nature of writ, directing the third respondent, namely, the Chief Election Commissioner, Election Commission of India, New Delhi - 110 001, to issue a notification for provision of imposition of life imprisonment to a candidate who pays cash for securing the votes in any future elections and so also, to the voters who cast their votes on receipt of consideration and further that, they should not cast their votes and that the Voter Identity Cards should also be seized and in the event of election being postponed on account of the said corrupt practice, the money spent by the Government for conducting the said elections is to be recovered from the concerned candidate, who pays cash for votes. The petitioner would further add that the said prayers had been made in his representation dated 12.12.2017 and it is to be considered and appropriate directions are to be issued to direct the third respondent to do the said exercise.

2. The petitioner, in the affidavit filed in support of this writ petition, would aver, among other things, that he is in the habit of taking very many public causes and in order to eke out his livelihood, he is running a small scale industry which manufactures fountain pen ink and getting a meagre income of Rs.6,000/- (Rupees Six Thousand only) and his Permanent Account Number is AXLPR5849J.

3. The petitioner would further aver that there are newspaper reports in all leading news dailies and in television channels as to the payment of cash for obtaining votes in General Elections, Bye-



Elections, Lok Sabha Elections and State Assembly Elections and would further add that in the Bye-Elections held to select a Member of Legislative Assembly in respect of Thirumangalam Assembly Constituency, Madurai District, a major political party paid a sum of Rs.5,000/- (Rupees Five Thousand only) to the voters for the purpose of securing their votes and similar thing had happened in the Parliamentary Election held in 2009 also and so also, in the year 2014.

4. The petitioner would further state that as per the information obtained under the Right to Information Act, 3,742 cases were reported in Tamil Nadu during the Lok Sabha Election held in 2009 and a sum of Rs.27,93,42,000/- (Rupees Twenty Seven Crores Ninety Three Lakhs and Forty Two Thousand only) was also seized. The petitioner would further aver that for the past few years, in this State, the politicians are paying cash to secure votes and after coming to power, started earning money in an illegal manner by indulging corrupt practices and in paragraph 17 of the affidavit, cited some instances.

5. The petitioner has also pointed out that for election of a Member of Legislative Assembly in respect of Aravakurichi Assembly Constituency, similar modus operandi has been adopted and poll was also countermanded and similar thing had also happened in respect of Dr.Radhakrishnan Nagar Assembly Constituency in Chennai City.

6. It is also stated by the petitioner that he filed W.P.No.24083 of 2017 as Public Interest Litigation for holding of election in Dr.Radhakrishnan Nagar Assembly Constituency and this Court, while holding that in the light of Section 151-A(b) of the Representation of the People Act, 1950, there can be no question of this Court issuing a writ of Mandamus directing the holding of bye-election at that stage and further observed that the election cannot indefinitely be kept in abeyance and expected that the Election Commission will announce the election dates at the earliest and preferably conduct the elections within 31.12.2017.

7. Accordingly, the petitioner/party-in-person has invited the attention of this Court to the notifications dated 27.05.2016 and 09.04.2017, passed by the third respondent, in and by which, the holding of election in respect of Aravakurichi Assembly Constituency as well as Dr.Radhakrishnan Nagar Assembly Constituency, was rescinded and would submit that the Election Commission of India had observed that a very many number of complaints had been received with regard to the distribution of money and other gifts in the form of consumable items to influence the voters, to vote for a particular candidate and therefore, thought fit to countermand the said election.

8. It is the further submission of the petitioner/party-in-person that in recent Bye-Election for Dr.Radhakrishnan Nagar Assembly Constituency, Chennai City, money and consumable items have



been freely distributed by certain candidates and it was an open secret, but, ultimately, the concerned candidate who has managed to influence the voters by adopting the said practice, won the Bye-Election.

9. It is also argued by the petitioner/party-in-person that though the said fact was well within the knowledge of the Election Commission of India, it abdicated its responsibility and remained as a silent, mute and blind spectator and therefore, it is right time for this Court by exercising its powers under Article 226 of the Constitution of India, to intervene and issue appropriate directions as sought for by the petitioner/party-in-person.

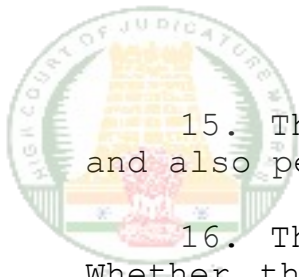
10. Mr.S.Jeyasingh, learned Central Government Standing Counsel accepted notice on behalf of the respondents 1 and 2 and is being led by Mr.V.Kathirvelu, learned Assistant Solicitor General of India and M/s.G.R.Associates accepted notice on behalf of the respondents 3 and 4 and Mr.K.K.Senthil, learned Counsel is appearing for them.

11. The respective learned Counsel for the respondents raised a preliminary objection as to the maintainability of the writ petition by contending that the prayer sought for by the petitioner/party-in-person cannot be granted for the reason that this Court cannot issue any direction as to the enactment of a legislation or guidelines to a constitutional body, namely, the Election Commission of India.

12. Alternately, it is submitted by the respective learned Counsel for the respondents that Chapter IX-A of the Indian Penal Code deals with the offences relating to elections and Section 171-B defines 'bribery'; Section 171-E is the penal clause which provides for punishment for bribery and Section 171-F also provides for punishment for undue influence or personation at an election and the Election Commission of India is also taken cognizance of the alleged undue influence in the form of cash and gift items given to the voters, in the recently concluded Bye-Election to Dr.Radhakrishnan Nagar Assembly Constituency and depending upon the result of the same, appropriate action would definitely be taken.

13. It is also contended that Part XV of the Constitution of India deals with the elections and as per Article 327, the Parliament is vested with the power to make provision with respect to elections to the Legislative Assemblies and it is for the said entity to deal with the said aspect by making provisions with respect to the said issue also.

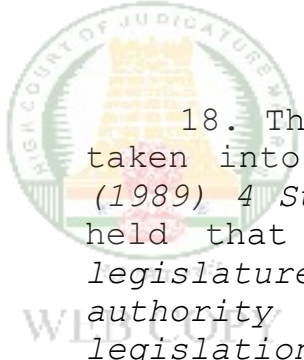
14. The attention of this Court was also drawn to Article 329 of the Constitution of India which speaks about the bar to interference by the Courts in electoral matters and they would urge that the present writ petition is nothing, but a Publicity Interested Litigation and pray for the dismissal of the same.



15. This Court has carefully considered the rival submissions and also perused the materials placed before it.

16. The primordial question that arises for consideration is, Whether this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, can direct the Election Commission of India to formulate or bring in force the remedial measures as sought for the petitioner/party-in-person in this writ petition?

17. In *State of Jammu & Kashmir v. A.R.Zakki and others* reported in 1992 Supp (1) Supreme Court Cases 548, the issue related to certain position by way of amendments in the Jammu and Kashmir Civil Services (Judicial) Recruitment Rules, 1967. The Readers and Librarians employed in the High Court of Jammu and Kashmir submitted a representation to the Honourable Chief Justice of the High Court praying for fixation of a quota for the employees for recruitment to the services for the reason that they do not have any prospects of future promotion. The High Court at a Full Court meeting took a decision to resolve to amend the Rules in a way to provide for reservation of 25 % of the vacancies in the service by way of promotion/transfer of certain class of the employees of the High Court. The said proposal for amendment of the Rules made by the High Court was sent by the State Government to the Commission for its opinion and the views of the Commission were forwarded to the High Court and it was placed at a Full Court meeting wherein it took a decision that the High Court did not agree with the proposal of Public Service Commission and reiterated the amendment already proposed. The said decision was also communicated to the Law Secretary to the Government. Since no action was taken by the Government on the proposal for amendment, certain persons employed as Readers and Librarians filed a writ petition praying for a writ of Mandamus directing the State Government to give effect to the recommendations of the High Court and to direct them to reserve quota for the service as recommended by the High Court. The said writ petition was allowed and the challenge was made to the said order by filing a Letters Patent appeal and it was also dismissed and therefore, the State of Jammu and Kashmir took the matter to the Honourable Supreme Court of India by way of a Special Leave Petition and on admission, it was converted as a Civil Appeal and taken up for disposal. The Honourable Supreme Court has taken into consideration its earlier decision in *Supreme Court Employees' Welfare Association v. Union of India* reported in (1989) 4 Supreme Court Cases 187 and observed in paragraph 10 that, "A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court."

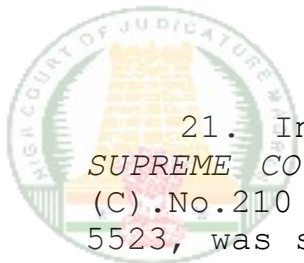


18. The Honourable Supreme Court in the said decision, has also taken into consideration paragraph 51 of the judgment reported in (1989) 4 Supreme Court Cases 187 (cited supra), wherein it has been held that "There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority."

19. In *Vasudeva Shenoy v. Government of India* reported in AIR 1994 KERALA 305, the petitioner therein came forward to file a writ of Mandamus directing the Government of India to issue a notification as envisaged under the proviso to Section 1(3) of the Wakf Act. The learned Single Judge (the Honourable Mr. Justice K.G. Balakrishnan, as His Lordship was then), after taking into consideration the judgment of the Honourable Supreme Court in *Aeltemesh Rein v. Union of India* reported in 1988 (4) SCC 54 : AIR 1988 SC 1768, wherein a prayer was sought directing the Central Government to bring Section 30 of the Advocates Act, 1961, into force. In the said decision, the Honourable Supreme Court observed that "it is not open to their Court to issue writ in the nature of mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central Government."

20. In the above cited decision rendered by the Kerala High Court, the decision in *State of Jammu & Kashmir v. A.R. Zakki and others* reported in 1992 Supp (1) Supreme Court Cases 548, has also been relied on. It is relevant to extract hereunder paragraph 7 of the decision in *Vasudeva Shenoy v. Government of India* reported in AIR 1994 KERALA 305:

"7. From the above decisions it is clear that the Court will not issue any writ or order in the nature of writ of mandamus directing the parliament or rule making authority to bring into force a particular enactment. There are ever so many legislations which was not brought into force. It is for the legislature or the executives, who is authorised to enforce the enactment to decide the question. It may be noticed that in the instant case the petitioner has not alleged any mala fide or unreasonableness on the part of the first respondent in not bringing into force Sec.63 B of the Act 69 of 1984. Therefore the prayer of the petitioner in the original petition cannot be granted. The request of the petitioner that this Court shall give a direction to consider Ext.P 3 also cannot be considered. It is for the first respondent to consider the representation received from the petitioner."



21. In *Union of India v. Namit Sharma* reported in AIR 2014 SUPREME COURT 122, review of the judgment dated 13.09.2012 in W.P (C).No.210 of 2012 reported in AIR 2013 SC (Civ) 36 : 2012 AIR SCW 5523, was sought. The Honourable Supreme Court while considering the said review application has quoted the Seven-Judge Bench in *P.Ramachandra Rao v. State of Karnataka* reported in AIR 2002 SC 1856 : 2002 AIR SCW 1841, wherein it is observed that "Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature."

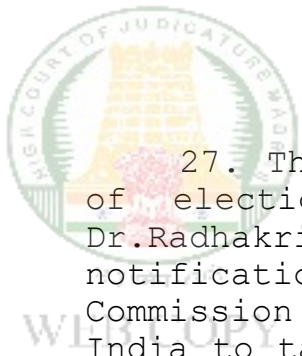
22. In an yet another decision relied on in the said decision in *Union of India and another v. Deoki Nandan Aggarwal* reported in AIR 1992 SC 96 : 1991 AIR SCW 2754, it is observed that "It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

23. The Election Commission of India is a constitutional body and it is entrusted with the solemn function of superintendence, direction and control of the elections.

24. Article 327 of the Constitution of India enables the Parliament to make provision with respect to elections to Legislatures.

25. In the light of the principles and *ratio* enunciated by the Honourable Supreme Court in the above cited decisions coupled with Article 327 of the Constitution of India, this Court in exercise of it's jurisdiction under Article 226 of the Constitution of India cannot issue any directions to the Election Commission of India as prayed for by the petitioner/party-in-person in this writ petition.

26. If the concerned elected person indulged in corrupt and unethical practice and got it elected, in the light of Section 80 of the Representation of the People Act, 1951, the said election shall not be called in question except by way of an election petition served in accordance with Chapter II and that apart, penal provision is also available under Chapter IX-A of the Indian Penal Code.



27. This Court also noted with the concern, the countermanding of elections regarding Aravakurichi Assembly Constituency and Dr.Radhakrishnan Nagar Assembly Constituency in the light of the notifications dated 27.05.2016 and 09.04.2017 passed by the Election Commission of India. It is right time for the Election Commission of India to take note and cognizance of illegal and unethical acts and put proper mechanism in place at the earliest.

28. It is also to be noted at this juncture that the Election Commission of India is vested with huge responsibility to conduct free and fair election for this great nation which is hailed as the largest democracy in the world. Therefore, this Court is definite that the Election Commission of India would continue to perform its functions for the purpose of ensuring that democracy continues to thrive and see to it that the relevant statutory provisions for ensuring free and fair elections are scrupulously complied with in letter and spirit.

29. In the result, this writ petition is dismissed with the above observations. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(ADII)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Home Secretary, Government of India,
Ministry of Home Affairs, North Block, New Delhi.
- 2.The Secretary,
Government of India,
Ministry of Law and Justice,
Shastri Bhawan, New Delhi - 110 115.
- 3.The Chief Election Commissioner,
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Ashoka Road, New Delhi - 110 001.
- 4.The Chief Election Officer (CEO), Tamil Nadu,
Fort St. George, Secretariat,
Chennai - 600 009.

+One cc to M/s.K.K.Ramesh, Party in Person, SR.No.41956

+One cc to Mr.S.Jeyasingh, Advocate, SR.No.41166

+One cc to Mr.K.K.Senthil, Advocate, SR.No.42483

rsb

RL/8C/8P/SV/MMS/SAR4/13/2/2018

ORDER MADE IN
W.P(MD)No.331 of 2018