

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.19743 of 2020

T.M.N. Deepak

... Petitioner

Vs.

1. Union of India
rep. by the Joint Secretary
Legislative Department
Ministry of Law & Justice
Room No.436, A Wing, 4th Floor
Shastri Bhawan, New Delhi 110 001.
2. Election Commission of India
rep. by the Senior Principal Secretary
Nirvachan Sadan, Ashoka Road
New Delhi 110 001.
3. Chief Electoral Officer &
Secretary to Government
State of Tamil Nadu
Public (Elections) Department
1st Floor, Main Building
Secretariat, Fort St. George
Chennai 600 009.

... Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for a writ of Certiorarified Mandamus to call for the
records and quash the impugned notification No.SRO G-7/2020
dated 22.09.2020 issued by respondents 2 and 3, together with
the Guidelines issued incidental thereto, and consequentially,
to issue directions to respondents 2 and 3 regarding the
procedure for conduct of elections by postal ballot.

For Petitioner

: Mr.R.Shanmughasundaram, S.C.
For Mr.S.Manuraj

For Respondents : Mr.R.Sankaranarayanan
Additional Solicitor General
Assisted by
Mr.K.Srinivasamurthy, SPCCG
for respondent-1

Mr.Niranjan Rajagopalan
For M/s. G.R. Associates
for respondents 2 and 3

ORDER
(Made by the Hon'ble Chief Justice)

This petition pertains to the manner in which the Election Commission has chosen a class of persons with disabilities to be afforded the luxury of voting by postal ballot and not having to attend the polling booth for casting their votes.

2. According to the petitioner, there is no reasonable basis for choosing some of the persons with disabilities and not others being extended the same courtesy. The petitioner refers to the Rights of Persons with Disabilities Act, 2016 and says that though Section 2(r) of such statute defines the expression "person with benchmark disability", there is no justification why only such persons would be chosen by the Election Commission.

3. Both the Union and the Election Commission support the measures adopted by the Election Commission in extending the benefit of postal ballot to a class of persons with disabilities. The Union refers to clause 2.4 of the Guidelines notified by the Election Commission on February 02, 2021 where it is specified that persons with benchmark disability as indicated in the governing statute of 2016 would be taken as the basis.

4. Loosely speaking, the Act of 2016 requires certification of the extent of disability to be obtained. The manner in which such certification would be made have been indicated in the statute. Ordinarily, government bodies are authorised to issue certificates of disability indicating the extent of disability. Such certificates are presumed to accurately indicate the extent of disability suffered by the concerned person, unless the certificates are undone or the validity thereof called into question.

5. The Election Commission in this case has chosen a class of persons with disability from the larger section of the group based on the benchmark extent as indicated in the governing statute. Section 60(c) of the Representation of the People Act,

1951 permits the Election Commission, in consultation with the government, to choose persons from any identified class to be extended the benefit of voting by postal ballot. The Conduct of Election Rules, 1961 engrafted under Section 169 of the Act of 1951 by the Central Government, in consultation with the Election Commission, refer to several classes of persons who may be extended the privilege of voting by postal ballot. Broadly speaking, these classes of persons, apart from those serving in the armed forces, are senior citizens above the age of 65 years, persons with disabilities, persons affected by Covid-19 and persons engaged in essential services.

6. By virtue of the enabling provision in Section 60(c) of the Act of 1951, a smaller set of persons from a larger set may be selected by the Election Commission as persons who would be permitted to exercise their franchise by postal ballot and not as in the usual course, by attending the polling booth. There can be no infirmity found in the choice of the class of persons with disability as made by the Election Commission. This aspect of the matter is also covered by a more elaborate judgment rendered on March 17, 2021 in W.P.No.20027 of 2021.

7. The other aspect which is highlighted in the present petition is the choice of only persons with benchmark disability by the Election Commission. There does not appear to be any basis to label such choice to be unreasonable or arbitrary and, in any event, the Election Commission's decisions in such regard cannot be seen to be otherwise capricious or unjustified.

8. The Election Commission is not a body of medical personnel. It has referred to the governing statute dealing with the rights of persons with disabilities in this country. The definition in the governing statute refers to a benchmark and it is such yardstick which has been applied by the Election Commission in assessing which class of persons of disabilities would be accorded the benefit to cast their vote by postal ballot.

9. There is no doubt that this petitioner seeks to espouse the cause of persons with disabilities who had been neglected for a considerable period of time in this country. Empirical studies have now revealed that there are many more persons with disabilities than one may ordinarily imagine. Government buildings and other places have now become compliant with the requirements of Act of 2016 and accessibility to the toilets has also increased upon awareness of persons with disabilities having gained ground. It will be open to the petitioner to make a detailed representation to the Election Commission as to how better facilities and more inclusive provisions can be devised or designed by the Election Commission to afford other persons

with disabilities a meaningful right to exercise their vote. As far as the ensuing assembly elections in the State are concerned, the measures taken by the Election Commission pertaining to persons with disabilities do not call for any interference.

10. W.P.No.19743 of 2020 is disposed of. There will be no order as to costs. WMP Nos.24388 and 24390 of 2020 are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Joint Secretary
Legislative Department
Ministry of Law & Justice
Room No.436, A Wing, 4th Floor
Shastri Bhawan, New Delhi 110 001.
2. The Senior Principal Secretary
Election Commission of India
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3. Chief Electoral Officer & Secretary to Government
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Public (Elections) Department
1st Floor, Main Building
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Chennai 600 009.

+1cc to M/s.G.R.Associates, Advocate, S.R.No.19469.

AK-II(CO)
CSR 30.04.2021

W.P.No.19743 of 2020

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