



W.P.(MD) No.640 of 2021

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 27.07.2022

CORAM:

**THE HON'BLE MR.MUNISHWAR NATH BHANDARI, THE CHIEF
JUSTICE**

and

THE HON'BLE MRS.JUSTICE S.ANANTHI

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S.Pandidurai

... Petitioner

-VS-

1.The Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi – 110 001.

2.The State of Tamil Nadu,
Rep. by its Chief Secretary to Government,
Secretariat, Fort St.George,
Chennai – 600 009.

3.The Chief Election Officer,
Public (Elections) Department,
Secretariat, Fort St.George,
Chennai – 600 009.

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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of declaration to declare Rule 20 of the Conduct of Elections Rules 1961 and Section 60 of the Representation of the People Act 1951, insofar as prescribing voting only through post as illegal and consequently direct the respondent Nos.1 to 3 to ensure 100% voting by personnel engaged in election duty using electronic voting machine instead of postal ballots in future elections pertaining to Parliament and Legislative Assembly within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.P.Thilak Kumar,
Government Pleader
for R2
No Appearance for R1 and R3

ORDER



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[Order of the Court was made by The Hon'ble The CHIEF JUSTICE]

This writ petition has been filed to declare Rule 20 of the Conduct of Elections Rules, 1961 and Section 60 of the Representation of the People Act, 1951 as illegal, insofar as prescribing voting only by post for those who remain on election duty. It is to further ensure 100% voting by those who remain on election duty.

2. Learned counsel submits that those who remain on election duty are required to fill a form involving many formalities and complications. Thus, out of three lakhs voters falling under such category, around one lakh and few thousand could vote leaving others. Therefore, the mechanism adopted by the respondents is not appropriate and, therefore, Rule 20 of the Conduct of Elections Rules 1961 and Section 60 of the



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Representation of the People Act 1951, are liable to be struck down.

3. We have considered the submission made by the learned counsel for the petitioner and perused the records.

4. A challenge is made to the Rule 20 of the Conduct of Elections Rules 1961 and Section 60 of the Representation of the People Act, 1951. Both the provisions aforesaid are quoted hereunder for ready reference:-

“20. Intimation by voters on election duty.—

[(1)] A voter on election duty who wishes to vote by post at an election shall send an application in Form 12 to the returning officer so as to reach him at least seven days or such shorter period as the returning officer may allow before the date of poll; and if the returning officer is satisfied that the applicant is a voter on election duty, he shall issue a postal ballot paper to him.



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[(2) Where such voter, being a polling officer, presiding officer or other public servant on election duty in the constituency of which he is an elector, wishes to vote in person at an election [in a parliamentary or assembly constituency] and not by post, he shall send an application in Form 12A to the returning officer so as to reach him at least four days, or such shorter period as the returning officer may allow, before the date of poll; and if the returning officer is satisfied that the applicant is such public servant and voter on election duty in the constituency, he shall—

(a) issue to the applicant an election duty certificate in Form 12B,

(b) mark 'EDC' against his name in the marked copy of the electoral roll to indicate that an election duty certificate has been issued to him, and

(c) ensure that he is not allowed to vote at the polling station where he would otherwise have been entitled to vote.]”

Section 60 of the Representation of the People Act 1951:

“[60. Special procedure for voting by certain



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classes of persons.—Without prejudice to the generality of the provisions contained in section 59, provision may be made, by rules made under this Act, for enabling,—

(a) any of the persons as is referred to in clause (a) or clause (b) of sub-section (8) of section 20 of the Representation of the People Act, 1950 (43 of 1950), (hereinafter in this section referred to as the 1950-Act) to give his vote either in person or by postal ballot or by proxy, and not in any other manner, at an election in a constituency where poll is taken;

(b) any of the following persons to give his vote either in person or by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, namely:—

(i) any person as is referred to in clause (c) or clause (d) of sub-section (8) of section 20 of the 1950-Act;

(ii) the wife of any such person to whom the provisions of sub-section (3) of section 20 of the 1950-Act apply and such wife being ordinarily residing with that person in terms of sub-section (6) of that section;

(c) any person belonging to a class of



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persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirement as may be specified in those rules.

(d) any person subjected to preventive detention under any law for the time being in force to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, subject to the fulfilment of such requirements as may be specified in those rules.]”

5. A challenge to the Rules and the Act has been made precisely on the ground that effective management mechanism is not provided for voting by those who remain on election duty. According to the petitioner, they should be permitted to exercise voting right by the electronic mode adopted by the respondents. We find that for those personnel who remain on election duty posted in the area other than the area in which they have to exercise the voting, to make it convenient for them to vote, the



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system of postal voting is in operation for decades and it is applied successfully.

6. The provisions under challenge cannot be held to be *ultra vires* only for the reason that now the system of voting from ballot paper has been shifted to electronic system. For an employee on election duty, voting right cannot be exercised on electronic mode, which remains available at the booth of the relevant constituency.

7. In view of the above and to ensure that the voting right of those on election duty is exercised and protected, appropriate mechanism has been provided, which involves no complications as stated by the petitioner.

8. The provisions under challenge cannot be struck down only for the reason that out of three lakhs such voters



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around one lakh and few thousand could exercise their voting right. In fact, everybody should exercise their voting right, but fact remains that 100% voting could be ensured in any of the election.

9. In view of the above and finding no unconstitutionality in the provisions under challenge, we dismiss the writ petition. No costs.

[M.N.B., C.J.] [S.A.I., J.]

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Index : Yes / No

Internet : Yes / No

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