

ITEM NO.33

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No.243/2024

NAULAK KHAMSUANTHANG & ORS.

Petitioner(s)

VERSUS

ELECTION COMMISSION OF INDIA & ORS.

Respondent(s)

Date : 15-04-2024 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Ms. Hetvi Patel, Adv.
Mr. Kamae Kaoliangpou, Adv.
Mr. Satya Mitra, AOR

For Respondent(s) Mr. Lenin Hijam, Adv.Gen. (Manipur)
Mr. Pukhrambam Ramesh Kumar, Adv.
Ms. Manisha Chava, Adv.
Mr. Karun Sharma, Adv.
Ms. Rajkumari Divyasana, Adv.
Mr. Abhijeet Singh, Adv.
Ms. Anupriya Srivastava, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 Two individuals and an organization called the Manipur Tribal Forum have moved these proceedings under Article 32 of the Constitution seeking a direction to the Election Commission of India¹ to make arrangements to

1 "ECI"

enable “internally displaced persons” settled outside the State of Manipur to cast their votes at the ensuing General Elections to the Lok Sabha in 2024 by setting up special polling booths in the States where such persons are presently residing.

- 2 Paragraph 8 of the petition contains a tabulated statement of such persons who have been relocated outside the State of Manipur as a result of the violence which took place in the State from 3 May 2023. The statement is reproduced below:

List of Internally Displaced People outside State of Manipur due to violence in State from 3 rd of May 2023		
Sr. No.	States	Displaced Persons
19	Delhi & NCR	4352
20	Mizoram	9192
21	Guwahati	1237
22	Kolkata	970
23	Shilong	184
24	Kohima (Including Kohima, Dimapur, etc.)	482
25	Hyderabad	104
26	Bangalore	524
27	Mumbai	680
	Total	17,725

- 3 Ms Hetvi Patel, counsel appearing on behalf of the petitioners submits that an arrangement similar to that which is sought in these proceedings has been made by the ECI in the case of Kashmiri migrants to vote in-person at “transitory camps”. It has been submitted that on a parity of application, ECI should be directed to make the same arrangements for ‘internally displaced persons’ from the State of Manipur.
- 4 Counsel for the petitioners also submitted that on 29 February 2024, ECI notified a scheme for voting by the internally displaced persons of Manipur in relief camps at the ensuing General Elections. However, it has been urged that this is confined only to voting at the relief camps within the State of Manipur and would not cover other displaced persons who are residing outside the State.
- 5 Mr Ankit Agarwal, counsel appearing on behalf of the ECI, on the other hand submitted that besides the bar under Article 329 of the Constitution, it is too late in the day for ECI to even consider making arrangements of the nature sought by the petitioners. Counsel submitted that the polling for Lok Sabha constituencies in the State of Manipur is due to take place on 19 and 26 April 2024. It has been urged that the petitioners were aware of the scheme notified by the ECI for voting at the transit camps in Manipur. Though the scheme was notified on 29 February 2024, the petition has been filed almost on the verge of the ensuing General Elections. That apart, counsel submitted that in the case of Jammu and Kashmir, certain provisions were in existence under the Jammu and Kashmir Representation of the People Act 1957 and the Jammu and Kashmir Conduct of Election Rules 1965 and, when the reorganization of the State took place, the earlier provisions were extended by the ECI.
- 6 The reliefs which have been sought by the petitioners would require a reconfiguration of the arrangements made for the casting of votes in the voting which is to take place on 19 and 26 April 2024 for the Lok Sabha seats

in the State of Manipur. It cannot be gainsaid that the ECI would be required, if the Court were to accept such a plea, to make administrative arrangements within a short span of three days. The petitioners have furnished in a tabulated statement, which is extracted in the earlier part of the order, a chart indicating that there are about 17,725 persons who have been displaced as a result of the violence which took place in the State of Manipur after 3 May 2023. Even according to the petitioners, they are situated in the NCR, Mizoram, Guwahati, Kolkata, Shillong, Kohima, Hyderabad, Bangalore and Mumbai. The authenticity of the contents of the statement has not been verified. Hence, the grant of relief cannot be confined only to the areas which are tabulated in the petition under Article 32 of the Constitution.

- 7 We are emphasizing these aspects since with a short span of three days left for the first round of voting which includes the Lok Sabha constituencies in the State of Manipur, the course of action which the petitioners claim would be entirely impracticable. Moreover, the claim of the petitioners, however *bona fide*, does raise broader issues of policy bearing on the conduct of the elections, something over which the ECI is constitutionally vested with control and supervision under Article 324 of the Constitution.

- 8 While the petitioners have relied upon the arrangements which were made in relation to Jammu and Kashmir, we find from the notification of the ECI dated 22 March 2024 that right since the elections to the State Legislative Assembly in 1996, a special scheme was devised under the Jammu and Kashmir Representation of the People Act 1957, which enabled migrant voters to vote by postal ballot for the constituencies in the places where they were registered as voters. The background in relation to Jammu and Kashmir emerges from the preambulatory statements in the notification which are extracted below:

“Whereas, at the time of the elections to the State Legislative

Assembly 1996, a special scheme was devised under the then prevalent Jammu and Kashmir Representation of the People Act, 1957 and the Jammu and Kashmir Conduct of Elections Rules 1965, which enabled these migrant voters to vote by postal ballot for their respective constituencies of their native places;

Whereas, the same facility to the above class of voters was extended at the time of the General Election to the House of People held in 1998 and 1999 by amending the Conduct of Election Rules, 1961 (Rules 27A to 27K);

Whereas, after taking into account several complaints about the delay transmission of the postal ballot in both ways by notified class of voters from different parts of the country, the Election Commission had decided during the General Election to the Legislative Assembly of J&K held in September-October, 2002 to provide these migrant voters their voting right, they should be enabled to vote in person at "special polling stations" set up outside the territorial limits of the constituency at Jammu, Udhampur and Delhi under Section 36A(1) of the then Jammu and Kashmir Representation of the People Act 1957. Those of migrant voters who were not in a position to avail of this facility to vote in person at these special polling stations were given the option of exercising their right to vote by availing of the facility to vote by postal ballot as was done in the previous elections;

Whereas, the said scheme having worked very well, the facility was extended during general election to Legislative Assembly held in 2008, 2014 and General Election to the Lok Sabha held in 2004, 2009, 2014 and 2019;

Whereas, the Government of India vide notification dated 9th August 2019 has abrogated Article 370 of the Constitution and promulgated the Jammu and Kashmir Reorganisation Act 2019 and inter-alia repealed the Jammu and Kashmir Representation of the People Act 1957 and Union Territory of Jammu and Kashmir would go for elections the very first time since its inception."

- 9 The above background therefore cannot be construed to be on all fours with the situation in Manipur. While notifying the scheme in relation to Jammu and Kashmir on 22 March 2024, the ECI had issued the following directions:

“NOW, THEREFORE, the Election Commission, in exercise of powers vested by Article 324 of the Constitution read with Section 25 of the Representation of the People Act 1951 for the purpose of casting votes at the poll in the General Election to the House of the People of Union Territory of Jammu and Kashmir, to be held in 2024, in pursuance of the notifications to be issued by the President under Section 14 of the Representation of the People Act 1951, directs continuation of the said scheme and accordingly hereby specifies the aforesaid migrant electors enrolled in any of the Parliamentary Constituencies of 1-Baramulla, 2-Srinagar and 3-Anantnag-Rajouri, who are residing outside their place of ordinary residence, but other than those who have been notified under clause (c) of Section 60 of the Representation of the People Act 1951 to vote by postal ballot, as the class of persons for whom special polling stations shall be provided outside the territorial limits of the Parliamentary Constituencies mentioned above.”

- 10 These arrangements were made in a factually different situation bearing in mind the earlier provisions which have held the field. In any event, for the reasons which we have already indicated, we have come to the conclusion that the interference of this Court, particularly at this belated stage, would cause substantial impediments in the conduct of the ensuing General Elections for the Lok Sabha constituencies in the State of Manipur. We are, therefore, not inclined to issue any such directions as sought, for the reasons which we have indicated in the earlier part of the order.
- 11 The Petition is accordingly disposed of.
- 12 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar