



2024:KER:31249

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 19TH DAY OF APRIL 2024 / 30TH CHAITHRA, 1946

WP (C) NO. 16024 OF 2024

PETITIONER:

VARKALA KAHAR
AGED 73 YEARS
CHIEF ELECTION AGENT OF SRI. ADOOR PRAKASH, CONGRESS I
CANDIDATE, ATTINGAL PARLIAMENTARY CONSTITUENCY,
THIRUVANANTHAPURAM DISTRICT., PIN - 695141
BY ADVS.
NISHA GEORGE
A.L.NAVANEETH KRISHNAN
SIDHARTH.R.WARIYAR

RESPONDENTS:

- 1 THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI REPRESENTED BY
ITS SECRETARY, PIN - 110001
- 2 THE CHIEF ELECTORAL OFFICER KERALA
ELECTION DEPARTMENT, KERALA LEGISLATIVE COMPLEX, VIKAS
BHAVAN P.O., THIRUVANANTHAPURAM, PIN - 695033
- 3 THE DISTRICT COLLECTOR/ELECTION OFFICER
DISTRICT COLLECTORATE, CIVIL STATION, KUDAPPANANKKUNNU,
THIRUVANANTHAPURAM, PIN - 695043
- 4 THE ELECTORAL REGISTRATION OFFICER/ TAHSILDAR
ATTINGAL PARLIAMENTARY CONSTITUENCY, ATTINGAL TALUK
OFFICE, CIVIL STATION, ATTINGAL, KACHERINADA,
THIRUVANANTHAPURAM, PIN - 695101
STANDING COUNSEL ELECTION COMMISSION OF INDIA, BY ADV
DEEPU LAL MOHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner has filed this writ petition with the following prayers;

“i. Direct the respondents to ensure that persons whose particulars are given in Exhibits P3 and P6 shall not be allowed to cast their votes in more than one place;

ii. Direct the Respondents 2 and 3 to ensure that Central Force is deployed to all the booths to ensure free and fair election.

iii. Direct the Respondents to identify the double entries with the use of recognized software and apps of the Election Commission of India to ensure that the double entry voters are not allowed to cast their votes in more than one place.”

2. When the matter is taken up for consideration today, Sri.George Poonthottam, the learned Senior Counsel for the petitioner submits that Ext.P3 produced along with the writ petition is a portion of the final voters’ list. Though Ext.P1 complaint was filed as early as on 15.12.2023, there are double entries existing in Ext.P3, which are not deleted by the Election Commission.

3. A statement has been filed on behalf of respondents 1, 2 and 4. It is relevant to extract paragraphs 20, 22, 23, 25 and 26 of the said statement, which read as follows;



20. It is further submitted that in view of the allegations in Ext. P5 representation (dated 12-04-2024) and as part of preparation of Absentee/Shifted/Dead voters list (ASD list) in respect of Attingal Lok Sabha Constituency, the District Election Officer, Thiruvananthapuram has as per proceeding No. E1-820845/2024 dated 16-04-2024, issued direction to Assistant Returning Officers and Electoral Registration Officers concerned to constitute special team to be headed by an Officer not below the rank of Junior Superintendent to verify the electoral roll and to identify the voters who are liable to be included in the Absentee/Shifted/Dead categories and to segregate the list booth wise and submit report after getting the ASD list confirmed by Booth Level Officers. The true copy of proceeding No. E1-820845/2024 dated 16-04-2024 of the District Election Officer, Thiruvanthapuram is produced herewith and marked as Annexure - R4.

22. In this context, it is pertinent to note that Paragraph 10.7.2 of the Handbook of Returning officers published by Election Commission of India provides as follows:

10.7.2 In addition to the working copies of Electoral Rolls, after distribution of Voters Slips to the Voters, A.S.D. (Absentees, Shifted and Dead) list has to be prepared by the BLOS. The said list is also to be furnished to the Presiding Officer along with Voters list to avert bogus voting.

Further, in order to prevent impersonation at the time of poll, the below noted special measures in respect of Absentee, Shifted and Dead electors, are to be followed:

i) List of ASD voters should be prepared polling station wise and it should be ensured that each Presiding Officer is provided with a separate list of Absentee, Shifted and Dead Electors (ASD List)

ii) On the day of poll, every elector, whose name appears in such a list, shall have to produce EPIC for his/her identification or any one of the alternative photo identity documents permitted by the Commission. The Presiding Officer shall verify the identification document personally and the details should be properly registered by the Polling Officer concerned in the register of voters in Form 17A.

iii) The First Polling Officer shall inform the Polling Agents about the ASD elector who has come to vote by



reading out his/her name loudly.

iv) Thumb impression of such electors shall also be obtained in addition to signature against the column of "signature/thumb impression" of Register of voters (Form 17A). The thumb impression shall be in addition to the signature even in the case of an elector who is a literate and can sign.

v) A declaration shall also be obtained from the ASD electors in the format given below:

**FORM OF DECLARATION ABSENTEE BY ELECTOR WHOSE
NAME IS IN ABSENTEE/SHIFTED/DEAD LIST**

I hereby solemnly declare and affirm that I am the same person whose name appears at Serial number... of Part number of the existing electoral roll of theconstituency which was prepared/revised with respect to first date of January/April/ July/ October..... as qualifying date. I am aware that impersonation at the elections is an electoral offence under the section 171 D of the Indian Penal Code....Thumb impression of the elector Name

Certified that the above declaration was made and subscribed by the elector above named before me.

.....Signature of the Presiding Officer

.....Number and name of the polling station.

Dated

vi) Presiding Officer shall maintain a record and give a certificate at the end of the poll (to be kept with Form 17A for scrutiny) that so many electors from the ASD list were allowed to vote after proper scrutiny.

vii) If videography/photography is being done in the polling station, such electors shall be photographed and their record kept.

viii) Micro observers, who are present, should ensure that these instructions with regard to Absentee. Shifted and Dead electors are meticulously followed and make a specific mention about this in their report.



ix) The Presiding Officer shall be briefed, in accordance with the Commission's latest instructions) specially about these procedures to be followed in Polling stations for electors who are in the list of Absentee, Shifted and Dead electors.

23. Moreover, in order to support the free and fair election process during the House of Parliamentary Constituency Election, 2024, an ASD Monitor Mobile Application (Version 1.0.3 April 2024) has also been developed at the instance of the Chief Electoral Officer, Kerala, specifically for the purpose of monitoring the voters that are included in the ASD list. Thus, if any person included in the ASD list turns up for voting, the Presiding Officer/First Polling Officer will log into the ASD Monitor App and enter the serial number of the ASD voter in the electoral roll and also capture and upload his photo in the said Mobile App. Accordingly, as per letter No. EL9/26/2024-ELEC dated 06-04-2024, the 2nd Respondent has instructed all District Election Officers and Returning Officers to ensure strict compliance of functioning of ASD Monitor Application. The true copy of letter No. EL9/26/2024-ELEC dated 06-04-2024 issued by the 2nd Respondent to all the District election Officers and Returning Officers along with copy of roles and responsibilities of various officers in Poll Manager and ASD Monitor Application is produced herewith and marked as ANNEXURE-R2(d).

25. Besides, as part of security measures, arrangements have been made for webcasting of Polls in 1423 polling booths in Attingal Parliamentary Constituency, which is one of the force multiplier tools to prevent any possibility of impersonation. Further on the date of poll, political parties are entitled to appoint one Polling Agent and two relief agents in each Polling Station. The important duty of Polling Agent is to help the Presiding Officer to detect and prevent impersonation of voters by challenging persons who try to impersonate voters.

26. In addition to the above, as Force Multiplier, 15 'Micro Observers' will be deployed in 15 polling stations which are identified as vulnerable booths and shadow booth to keep extra vigil at Polling Booth and Force Deployment Plan has also been prepared in consultation with the Central Observer' and accordingly adequate force, both CAPF and Kerala Police, is being deployed as per directions of Election Commission of India. Besides, two Company of Central Armed Police Force has already been deployed in the District.

An additional affidavit has also been filed on 19.04.2024 on



behalf of respondents 1, 2 and 4.

4. The learned Standing Counsel appearing for the Election Commission submits that all precautionary measures are being taken to ensure a free and fair conduct of the election in the State and to ensure sanctity of the electoral roll. It is further submitted that no person will be allowed to cast unauthorized votes in the ensuing election. According to the learned Standing Counsel, the process for identifying the double entries in the final voters' list is under process and once the list of the double entry voters is ready, the ASD (absentee/shifted/dead) voters' list can be furnished to the respective candidates or to their election agents.

5. In a constitutional democracy, the government is a government, of the people, by the people and for the people; and each of us have a participatory role in electing the government. On the day of election, the vote that each citizen casts, counts as of the same value. So, our constitution and our law provide for one citizen, one vote and one value. That is the great power of our nation as a constitutional democracy. Hence, on a consideration of the entire facts of the case, I am of



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the opinion that the writ petition can be disposed of, recording the statement and additional statement dated 18.04.2024 and 19.04.2014 respectively filed by the Election Commission.

Accordingly, the writ petition is disposed of, directing respondents 1, 2 & 4 that while conducting the election scheduled to be held on 26.04.2024, they shall strictly adhere to the undertaking given by them before this Court in the form of statements and shall take all possible steps to ensure that one citizen casts only one vote and double entry voters are not allowed to cast their vote in more than one place. It is also made clear that once the list of the double entry voters is ready, the ASD (absentee/shifted/dead) voters' list shall be furnished by respondents 1, 2 & 4 to the respective candidates or to their election agents.

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-



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APPENDIX OF WP(C) 16024/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF LETTER NO. ATL/MP/393/2023 DATED 15.12.2023 ADDRESSED TO THE CHIEF ELECTORAL OFFICER.
- Exhibit P2 TRUE COPY OF COMPLAINT DATED NIL ADDRESSED TO THE ELECTORAL REGISTRATION OFFICER, ATTINGAL.
- Exhibit P3 TRUE COPY OF THE LIST PREPARED BY THE PETITIONER TAKEN FROM THE VARIOUS THE ASSEMBLY CONSTITUENCIES IN ATTINGAL PARLIAMENTARY CONSTITUENCY SHOWING DOUBLE ENTERED NAMES OF 130 PERSONS.
- Exhibit P3(a) TRUE COPY OF THE RELEVANT PORTION OF VOTERS LIST OF VARKALA ASSEMBLY CONSTITUENCY - PART 163 SHOWING DOUBLE ENTRIES WITH NAME AND PHOTOGRAPHS OF THE VOTERS.
- Exhibit P3(b) TRUE COPY OF THE RELEVANT PORTION OF VOTERS LIST OF VAMANAPURAM ASSEMBLY CONSTITUENCY - PART 67 SHOWING DOUBLE ENTRIES WITH NAME AND PHOTOGRAPHS OF THE VOTERS.
- Exhibit P3(c) TRUE COPY OF THE RELEVANT PORTION OF VOTERS LIST OF ARUVIKKARA ASSEMBLY CONSTITUENCY - PART 115 SHOWING DOUBLE ENTRIES WITH NAME AND PHOTOGRAPHS OF THE VOTERS.
- Exhibit P3(d) TRUE COPY OF THE RELEVANT PORTION OF VOTERS LIST OF ATTINGAL ASSEMBLY CONSTITUENCY - PART 203 SHOWING DOUBLE ENTRIES WITH NAME AND PHOTOGRAPHS OF THE VOTERS
- Exhibit P3(e) TRUE COPY OF THE RELEVANT PORTION OF VOTERS LIST OF CHIRAYINKEEZHU ASSEMBLY CONSTITUENCY - PART 5 SHOWING DOUBLE ENTRIES WITH NAME AND PHOTOGRAPHS OF THE VOTERS.
- Exhibit P3(f) TRUE COPY OF THE RELEVANT PORTION OF VOTERS LIST OF NEDUMANGAD ASSEMBLY CONSTITUENCY - PART 40 SHOWING DOUBLE ENTRIES WITH NAME AND PHOTOGRAPHS OF



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THE VOTERS.

- Exhibit P4 TRUE COPY OF THE RIGHT TO INFORMATION
REPLY NO. E1-8062/2023 DATED
30.03.2024.
- Exhibit P5 TRUE COPY OF THE COMPLAINT DATED
12.04.2024 BEFORE THE ELECTION
COMMISSION OF INDIA AGAINST THE
ELECTORAL OFFICER.
- Exhibit P6 COMPACT DISK (CD) OF THE ENTRIES IN
EXHIBIT P3 FORM A PART
- Exhibit P7 TRUE COPY OF THE LETTER NO.
2720/EL3/2021/ELEC. DATED 23.3.2021
ISSUED BY THE CHIEF ELECTORAL OFFICERS
TO ALL THE DISTRICT ELECTION OFFICERS

RESPONDENT ANNEXURES

- Annexure R2(e) The true copy of minutes of meeting
convened by District Election Officer,
Thiruvananthapuram on 01-03-2024
- Annexure R2(a) The true copy of proceeding No. EL-
505971/2023 dated 20-12-2023, issued by
the District Election Officer,
Thiruvananthapuram
- Annexure R2(b) The true copy of letter No. E1-245/2024
dated 17-04-2024 addressed by the 4th
Respondent to the District Election
Officer, Thiruvananthapuram
- Annexure R2(c) The true copy of proceeding No. E1-
820845/2024 dated 16-04-2024 of the
District Election Officer,
Thiruvananthapuram
- Annexure R2(d) The true copy of letter No.
EL9/26/2024-ELEC dated 06-04-2024
issued by the 2nd Respondent to all the
District Election Officers and
Returning Officers along with copy of
roles and responsibilities of various
officers in Poll Manager and ASD
Monitor Application