



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

CORAM :

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

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.Nos.736, 953, 958, 1201 & 1268 of 2022
& WMP.Nos.807, 1019 & 1376 of 2022

WP.No.736 of 2022 :

Dr.M.Nakkeeran

.. Petitioner

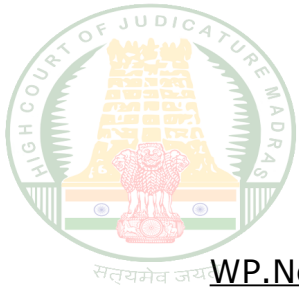
Vs

1.The State Election Commissioner,
State Election Commission,
100 Feet Ring Road, Vadapalani, Chennai-26.

2.The Secretary, State Election Commission,
100 Feet Ring Road, Vadapalani, Chennai-26

3.State of Tamil Nadu, Rep. by the
Principal Secretary to Government,
Department of Health and Family Welfare,
Fort St. George, Chennai.

.. Respondents



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WP.No.953 of 2022 :

WEB COPY

Prof.Dr.R.A.Pandayaraj

.. Petitioner

Vs

1.The State of Tamil Nadu
Rep. by its Principal Secretary to Government
Health and Family Welfare Department
Fort St.George Secretariat
Chennai-9.

2.The State Election Commissioner,
State Election Commissioner,
100 Feet Ring Road, Vadapalani, Chennai-26.

3.The Secretary
State Election Commission,
100 Feet Ring Road,
Vadapalani, Chennai-26.

.. Respondents

W.P.No.958 of 2022 :

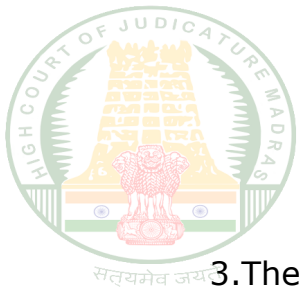
The Federation of Maduravoyal
Residents Welfare Association Rep. by
its General Secretary C.Thirumaladimai

.. Petitioner

Vs

1.The Tamil Nadu State Election Commission
Rep. by its State Election Commission
No.208/2 Jawaharlal Nehru Road
Opp. CMBT Arumbakkam, Chennai-106.

2.The State of Tamil Nadu
Rep. by its Principal secretary to Government
Municipal Administration and
Water Supply (Election) Department,
Fort St. George, Secretariat, Chennai-9.



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

3.The Secretary Government

Rural Development and Panchayat Raj Department,
Government of Tamil Nadu
Fort St. George Secretariat, Chennai-9.

4.The State of Tamil Nadu

Rep. by Principal Secretary to Government
Ministry of Health and Family Welfare
Fort St. George Chennai-9.

5.The State of Tamil Nadu

Rep. by Principal Secretary to Government
Municipal Administration and Water Supply Department,
Fort St. George
Chennai-9.

.. Respondents

WP.No.1201 of 2022 :

Nearvazhi Iyakkam, Rep by its
Managing Trustee T.Ganeshkumar

.. Petitioner

Vs

1.The Chief Secretary of Tamil Nadu
Rep by its Secretary, Secretariat
Fort St. George Chennai

2.The Tamil Nadu Election Commission
Rep. by its Secretary Tamil nadu
State Election Commission
Secretariat, Fort St. George, Chennai

3.The Tamil Nadu Revenue Disaster Management
Rep.by its Secretary
Tamil Nadu State Election Commission
Secretariat
Fort St. George Chennai



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

4.The Tamil nadu Health and Family Welfare

Rep by its Secretary

Tamil Nadu State Election Commission

Secretariat, Fort St. George Chennai

.. Respondents

WP.No.1268 of 2022 :

K.Hyder ali

.. Petitioner

Vs

1.The State Election Commissioner,

rep. by its Secretary No.208/2

Jawaharlal Nehru Salai

Arumbakkam, Chennai-106.

2.The Government of Tamil Nadu

Rep.by its Secretary Health Department

Fort St. George Secretariat Chennai-9.

.. Respondents

Prayer: Petitions filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus

(i) directing the respondents to take in to consideration the present covid pandemic situation and accordingly defer the holding of elections to 21 corporations 138 Municipalities and 490 Town panchayats and any other local bodies till the covid pandemic situation improves (WP.No.736 of 2022);

(ii) directing the respondents to defer notification and conduction of local body elections in respect of Corporations Municipalities and Town Panchayats and any other local bodies till the Covid-19 third surge wave is minimized (WP.No.953 of 2022);



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

(iii) directing the 1st respondent to defer the local body elections to a date where the COVID situation permits conduct of election and further direction to the 4th and 5th respondents to set up a committee taking inputs from the concerned Health Authorities and assessing the pandemic situation from mandated authorities like Corporation and Municipalities and to ensure the protection of general Public which is guaranteed and Article 21 of the Constitution of India (W.P.No.958 of 2022);

(iv) directing the 1 to 4 respondents to restrain them from conducting the local body election in the State of Tamil nadu by considering petitioners representation dated 20.01.2022 (WP.No.1201 of 2022); and

(v) directing the respondents to defer for holding the Local body election for 21 corporations, 138 municipalities and 490 town panchayat till the Covid-19 spread fully controlled by the Government of Tamil Nadu (WP.No.1268 of 2022).

For Petitioners : Mr.S.Prabhakaran,
Senior Counsel for
Mrs.Dakshayani Reddy for
petitioner in WP.No.736 of
2022

Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.G.Sankaran for petitioner
in WP.No.953 of 2022



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

Mr.T.Mohan for
Ms.T.Dharani for petitioner
in WP.No.958 of 2022 and

Mr.P.S.Raman, Senior
Counsel for Mr.Deepan
Udhay for petitioner in
WP.No.1201 of 2022

Mr.M.Vijayakumar for
petitioner in WP.No.1268 of
2022

For Respondents

Mr.R.Shanmugasundaram,
Advocate General assisted
by Mr.P.Muthukumar, State
Government Pleader for
State

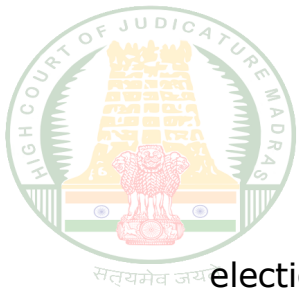
Mr.S.Sivashanmugam,
Standing Counsel for State
Election Commission

COMMON ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

We have heard the learned counsel for the respective parties.

2. The above writ petitions have been filed seeking a direction
to the State Election Commission to defer the urban local body



elections in the present situation of Covid-19.
WEB COPY

3. The above writ petitions have been filed apprehending a Notification from the State Election Commission for election to urban local bodies.

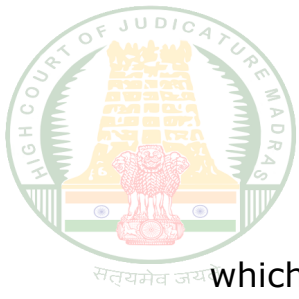
4. It is the submission of the respective learned counsel appearing for the petitioners that looking into the present situation of Covid-19 Third Phase, the State Election Commission and the State Government should have taken a decision to defer elections to urban local bodies and that if the elections are held after two or three months, it will not affect the citizens of the State, but in case of conduct of elections in the present scenario, it may affect public health. Therefore, according to them, there is no urgency for the State Election Commission to notify elections to urban local bodies. They would further submit that though the elections were scheduled to be held in the year 2016, for the past five years, no elections were notified and hence, the petitioners sought to defer the elections, which is not otherwise conducted within time schedule.



WEB COPY

5. The learned counsel for the respective petitioners have referred to various documents and figures showing the present status of the State of Tamil Nadu with reference to Covid-19 Third Phase. They would submit that the number of cases is going on the higher side; so also the causalities and at present, if elections are conducted, it may give rise to further increase in the number of cases. Taking into consideration the aforesaid situation, the State Election Commission be directed to defer elections, to the urban local bodies by two or three months.

6. The learned counsel appearing for the respective petitioners have made a reference to the provisions of the Disaster Management Act, 2005 (for brevity, the Act of 2005) and submitted that even the State is under an obligation to take measures, as envisaged under Sections 38 to 40 of the Act of 2005 and even the State Election Commission has to take note of the present situation so as to avoid spreading of Covid-19, as house to house campaigning would be undertaken in the urban local body elections,



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

which is different when compared to assembly elections or parliamentary elections. There would be a possibility of spread of Covid-19 Third Phase in house to house campaigning and therefore, appropriate directions are required to be given to defer the elections.

7. It is otherwise required as per the mandate under Article 47 of The Constitution of India. The public health is one of the subjects, which is required to be taken note of by the State and for that reason, the State is required to pass appropriate orders even under the Disaster Management Act of 2005. Article 243 of The Constitution of India mandates for the elections every five years. But, it cannot be taken in ignorance of Article 47 of The Constitution of India. The elections should not be held at the cost of public health, otherwise, there would be a violation of Article 47 of The Constitution of India. In view of the aforesaid and with reference to Article 47 of The Constitution of India, apart from the Act of 2005, the prayer is made to issue appropriate directions as sought in the writ petitions.



WEB COPY

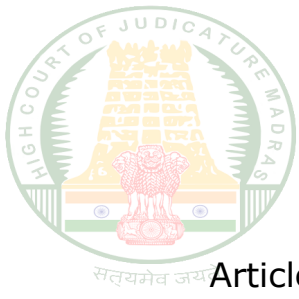
8. The learned counsel appearing for the respective petitioners have made a reference to the recent judgment of the Hon'ble Supreme Court in the case of **State of AP Vs. the Andhra Pradesh State Election Commission [WP(Civil) No.437 of 2020 dated 18.3.2020]** wherein the State Election Commission concerned issued a Notification on 15.3.2020, postponing elections for the local bodies such as panchayats and municipal bodies, by six weeks. The Supreme Court refused to interfere for the reason that the postponement of elections was due to possible outbreak of Covid-19 pandemic. The view taken by the Apex Court in the said decision needs to be applied in the present case though the only one distinguishing factor in the case before the Supreme Court was that the State Election Commission had already taken a decision and issued a Notification to postpone the elections whereas in the present case, no such decision has been taken by the State Election Commission of Tamil Nadu. Therefore, this Court may issue directions to the State Election Commission to postpone the elections in the present scenario.



WEB COPY

9. A further reference is made to the latest judgment of the First Bench of the Calcutta High Court in the case of ***Bimal Bhattacharya Vs. State of West Bengal [reported in 2022 SCC Online Cal 140]***. The issue before the Calcutta High Court was similar to what has been raised before this Court and therefore, the judgment of the Calcutta High Court applies to the facts of the present case. After taking note of the situation prevailing due to pandemic, the State Election Commission concerned was directed to take appropriate decision in the matter to defer elections for 4 to 6 weeks. The learned counsel for the respective petitioners have sought to apply the judgment of the Calcutta High Court on the facts of the present case.

10. It is the submission of the petitioners that a direction similar to what has been given by the Calcutta High Court can be given even with reference to the judgment of the Supreme Court in the case of ***Benedict Denis Kinny Vs. Tulip Brian Miranda [reported in 2020 SCC OnLine SC 802]*** wherein elaborate discussions were made regarding exercise of jurisdiction under

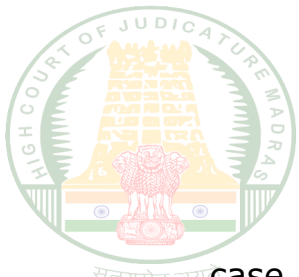


W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

Articles 32 and 226 of The Constitution of India. In view of the judgment of the Supreme Court in the case supra, this Court may exercise its jurisdiction under Article 226 of The Constitution of India to issue directions to the State Election Commission of the nature as prayed for by the petitioners and for that purpose, the order dated 27.9.2021 passed by the Supreme Court issuing directions to the State Election Commission to hold elections within a period of four months should not be taken to be a bar for exercising the jurisdiction under Article 226 of The Constitution of India.

11. It is their further submission that in the said judgment of the Supreme Court, elaborate discussions with regard to the provisions restricting the jurisdiction of this Court under Article 226 of The Constitution of India have been made, which is larger than that of the Supreme Court of India under Article 32 of The Constitution of India, this Court may pass appropriate orders to direct the State Election Commission to postpone the elections and it is more so when the order passed by the Supreme Court in the



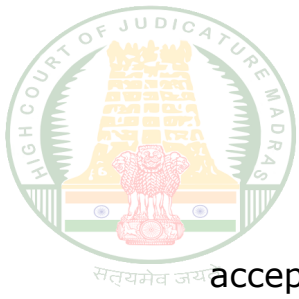
W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

case of **S.Shankar Vs. Election Commission of India**
[M.A.No.1404 of 2021 in M.A.No.821 of 2021 in M.A.No.2120

of 2020 in W.P.(Civil) No.1443 of 2019 dated 27.9.2021], was not after taking note of the present situation of pandemic. Rather, the issue regarding Covid pandemic was not argued in the said case.

12. In view of the facts aforesaid, the order of the Apex Court dated 27.9.2021 would not close the jurisdiction of this Court under Article 226 of The Constitution of India. It does not operate even as a res judicata. A prayer is made for exercise of jurisdiction under Article 226 of The Constitution of India without being influenced by the order of the Apex Court dated 27.9.2021, as, it is, otherwise, not applicable to the facts of this case.

13. A reference is made to paragraphs 30 to 34 of the judgment of the Supreme Court in the case of **Benedict Denis Kinny (cited supra)** to submit that even if a statutory bar has been caused with regard to exercise of jurisdiction by the High Court under Article 226 of The Constitution of India, the same was not

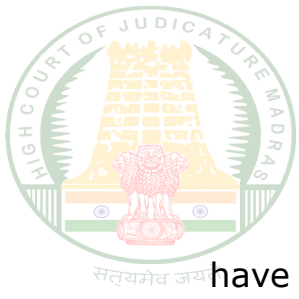


W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

accepted by the Apex Court. Rather, the exercise of jurisdiction under Article 226 of The Constitution of India was permitted. A reference to the judgment of the Apex Court in the case of ***L.Chandra Kumar Vs. Union of India [reported in (1997) 3 SCC 261]*** was also given to reiterate that this Court is having ample power under Article 226 of The Constitution of India and it would not otherwise offend the order passed by the Apex Court dated 27.9.2021.

14. The next argument made by the petitioners is with reference to Rule 22 of the Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporations (Elections) Rules 2006 (for short, the Rules of 2006), which mandates that before issuance of any Notification, the State Election Commission shall, in pursuance of the Constitutional provisions, consult the Government before issuing Notification for elections. It is submitted that no consultation with the State Government has been made by the State Election Commission for issuance of the Notification for election. Thus, even the provisions of Rule 22 of the Rules of 2006



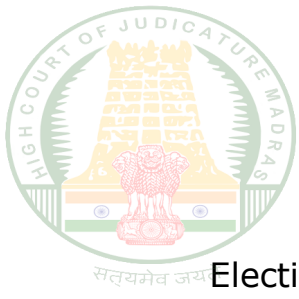
W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

have been violated and accordingly, a prayer is made not only with reference to the present situation of pandemic, but also with reference to the Rules of 2006 to issue appropriate order to direct the State Election Commission to defer the elections. It is also prayed that the elections may be directed to be notified only after consultation with the Government as per Rule 22 of the Rules of 2006.

15. The writ petitions are contested by the State Election Commission. It is submitted by the learned Standing Counsel appearing for the State Election Commission that the Notification for election is yet to be issued and therefore, the writ petitions are premature. It is further submitted that taking into consideration the directions issued by the Government from time to time with regard to the present situation of Covid-19 III Phase, appropriate orders have been issued giving protocol to be maintained during the course of elections.

16. The learned Standing Counsel appearing for the State

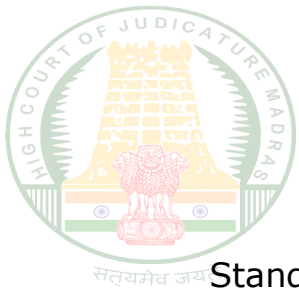


W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

Election Commission submits that the first order was passed on 10.12.2021 indicating as to how the elections would be conducted and subsequent to it, another order was passed with regard to the details of containment zones. According to the learned Standing Counsel, the State Election Commission would take all precautions in holding the elections, which are yet to be notified. It is also submitted that the State Election Commission is under an obligation to notify elections pursuant to the directions given by the Apex Court and therefore, while holding the elections, they would not only take note of public health, but also ensure that protocol prescribed is adhered to properly, for which, detailed instructions have been given in the order dated 10.12.2021. It is also submitted that a Notification for the elections would be issued after compliance of Rule 22 of the Rules of 2006, as, otherwise, the State Government has already issued appropriate instructions.

17. The allegations for non compliance of the provisions of Rule 22 of the Rules of 2006 are not made out. The learned



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

Standing Counsel further submits that in view of the order passed by the Apex Court dated 27.9.2021, the State Election Commission is under an obligation to notify the elections within a period of four months. After referring to the relevant orders and action taken by the respondents, the learned Standing Counsel has sought to dismiss the writ petitions.

18. The learned Advocate General appearing for the State submits that the State Government would abide by the directions of this Court. The State Government is taking every care to control the spreading of Covid-19 Third Phase. Further, according to the learned Advocate General, appropriate instructions have been given to the State Election Commission. According to him, the State has made arrangements for medical assistance and even for oxygen and medicines. He has prayed for issuance of appropriate orders, which would be followed by the State Government.

19. Per contra, the learned counsel appearing for the respective petitioners submit that if the petitioners are required to



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

approach the Apex Court in the light of the orders passed by the Supreme Court dated 27.9.2021, an appropriate direction for it may be given to the petitioners after granting an interim order at least for two weeks to restrain the State Election Commission to issue a Notification. A reference is made to the order passed by this Court on 01.12.2021 in W.P.No.22288 of 2021 etc. Therein though a reference to the order passed by the Apex Court directing the State Election Commission, Puducherry to hold the elections within time frame was made, yet this Court continued the interim order for a period of two weeks, so that the Commission may approach the Supreme Court for appropriate orders. The petitioners pray for issuance of similar directions in the present case also.

20. We have carefully considered the rival submissions of the parties and perused the records.



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

21. The batch of writ petitions have been filed seeking a direction to the State Election Commission to postpone or defer the elections to urban local bodies till the surge of Covid-19 pandemic comes to an end. The petitioners have made a reference to the details, which contain as to how many persons are getting affected by Covid-19 Third Phase every day and as to the number of active cases in the State of Tamil Nadu apart from hospitalization.

22. Based on those figures, it is submitted by the petitioners that the State Government or the State Election Commission should have taken a decision to postpone the election, which was, otherwise, due and scheduled to be held in the year 2016 and as the elections could not be held for five years, by deferring the elections for a period of two to three months, the Constitutional mandate would not get affected.

23. To appreciate the said argument of the petitioners, we need to make a reference to the order passed by the Apex Court dated 27.9.2021 wherein a direction was given to the State Election

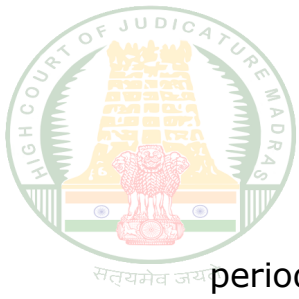


W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

Commission to hold elections within a period of four months. The said order dated 27.9.2021 was on an application. The direction to hold the elections within a period of four months was given on an affidavit filed by the State Election Commission. It was keeping in mind the fact that elections for the local bodies could not be held in the year 2016 and even thereafter, so as to comply with the mandate of The Constitution of India. The failure of the State Election Commission was taken note of by the Apex Court for calling an affidavit. An affidavit was filed to ensure the elections within four months. In the light of the aforesaid, these writ petitions have been filed apprehending a Notification in compliance of the directions given by the Apex Court. The prayer is to direct the State Election Commission to postpone or defer the elections in the present scenario of Covid-19 pandemic Third Phase.

24. The question that arises for consideration is as to whether this Court should pass an order with reference to the directions made by the petitioners overlooking the directions of the Apex Court to the State Election Commission to hold the elections within a



period of four months.
WEB COPY

25. The learned counsel appearing for the respective petitioners submit that this Court, while exercising jurisdiction under Article 226 of The Constitution of India, has vast powers to issue appropriate orders in the fitness of the case and a reference is made to the judgment of the Apex Court in the case of ***In Re : Distribution of Essential Supplies and Services During Pandemic [SMW(C) No.3 of 2021 dated 27.4.2021]***. Therein the Apex Court made a distinction between exercise of jurisdiction under Article 32 of The Constitution of India by the Supreme Court and exercise of jurisdiction by the High Court under Article 226 of The Constitution of India.

26. It is no doubt true that the jurisdiction of this Court under Article 226 of The Constitution of India is quite vast and it is not only to address the issues with regard to fundamental rights, but also with regard to legal rights.



WEB COPY

27. The question would, however, be as to whether exercise of such jurisdiction can be going against the directions of the Apex Court.

28. It is not a case where we refuse to exercise our jurisdiction under Article 226 of The Constitution of India with reference to any bar under the statutory provisions or the judgment of the Supreme Court, but to maintain judicial discipline and thereby not to pass any order contrary to the directions of the Apex Court.

29. At this stage, an argument was advanced by the petitioners stating that the issue with regard to Covid-19 pandemic Third Phase was not an issue before the Apex Court for issuance of directions to conduct elections and therefore, the order of the Apex Court dated 27.9.2021 is not binding and they will not operate as res judicata.

30. The arguments raised by the petitioners cannot be

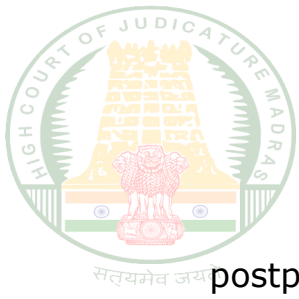


W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

accepted, as, otherwise, judicial discipline cannot be maintained. It is more so when no one prevented the petitioners to approach the Apex Court to seek appropriate directions for postponement or deferment of the elections on the grounds urged before us. This Court rather asked the learned counsel for the respective petitioners as to why an application has not been moved before the Apex Court for extension of time with regard to the situation of Covid-19 pandemic Thrid Phase. It is submitted that petitioners being not parties to the litigation before the Apex Court, the application could not be moved. It is only the State Election Commission, which ought to have moved the Supreme Court.

31. The aforesaid above argument of the petitioners is not acceptable in view of the fact that if the petitioners have any grievance in holding the election and the State Election Commission has to conduct elections pursuant to the undertaking given before the Apex Court, anyone aggrieved by the directions issued therein could have approached the Apex Court. The State Election Commission, in their wisdom, did not file any application seeking

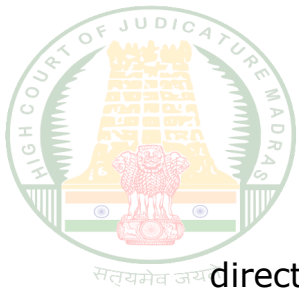


W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

postponement of election. It may be for the reason that they have already issued a detailed order to maintain protocol in the elections, which is yet to be notified. The detailed protocol would be referred to in the subsequent paragraphs of this judgment. The State Election Commission may be justified to proceed further in the matter in view of the precautions already ordered in the ensuing elections.

32. In any case, none of the parties approached the Apex Court to seek appropriate orders to extend the period and in the absence of it, this Court cannot issue directions contrary to what had been directed by the Apex Court. Though the direction of the Apex Court dated 27.9.2021 was not after considering the Third Phase of Covid-19 pandemic, yet we cannot ignore that second wave of pandemic was existing. The Apex Court, taking note of the delay in holding the elections, going against the mandate of The Constitution of India, directed the State Election Commission to file an affidavit/undertaking to hold elections. Thus, we are not in agreement with the learned counsel for the petitioners to issue a



WEB COPY

direction for postponement or deferment of elections going against the order of the Apex Court.

33. The State Election Commission has otherwise issued a detailed order for the elections, to be notified. Paragraph 9 of the order dated 10.12.2021 issued by the State Election Commission is quoted hereunder for ready reference:

"Election Campaign :

- (1) The candidates can undertake house to house campaign with minimum (maximum 3) supporters, maintaining social distance in the campaign and they shall wear face mask without fail. As far as possible, the priority should be given to the campaign through electronic media.*
- (2) The campaign is restricted to the concerned local body ward/village panchayat.*
- (3) The convoy of vehicles should be broken after every three vehicles. The intervals between two sets of convoy of vehicles should be half an hour.*
- (4) Candidates can use printed notices for their campaign. While campaigning bearing face mask and hand gloves are compulsory.*
- (5) In view of Covid-19, campaigning in large groups is not allowed.*



WEB COPY

- (6) *Covid positive candidates shall restrict their campaign through electronic media only and physical presence in campaign is not allowed.*
- (7) *Candidates can arrange meetings in the ward strictly following all covid-19 protocols.*
- (8) *All political parties and all candidates should exercise a degree of responsibility and ensure that campaign meetings and gatherings even limited to private groups, maintain the covid protocol.*
- (9) *The use of masks is mandatory since there is a fine, which is attracted upon masks not being used.*
- (10) *The distancing norms must be maintained at all times and measures for sanitation should be resorted to frequently.*
- (11) *It would also be the duty of the candidates to make voters aware of protocol at meetings and gatherings and wherever they campaign.*
- (12) *Non compliance of instructions – anybody violating instructions on covid-19 measures will be liable to be proceeded against as per the provisions of Sections 51 to 60 of the Disaster Management Act, 2005, besides legal action under Section 188 of the IPC and other legal provisions as applicable as specified in Order No.40-3/2020-DM –I(A) dated 29.7.2020 of Ministry of Home Affairs. District Election Officer should bring this to the notice of all concerned.”*



WEB COPY

34. A perusal of the above quoted paragraph shows that all the precautions for the safe conduct of the election have been directed for the elections to be notified for the urban local bodies. The directions given in paragraph 9 of the order dated 10.12.2021 take care of the present scenario of Covid-19 Third Phase and while making house to house campaigning, it does not permit more than three supporters at a time in that campaign and that too, with social distancing. Appropriate directions have been given to the political parties and all the candidates to exercise a degree of responsibility and ensure that campaign meetings and gatherings are limited to private groups so as to maintain the Covid Protocol.

35. While the State Election Commission issued appropriate instructions in the above quoted paragraph, a further direction for the consequence of non compliance of the instructions has been given.

36. At this stage, we would be making a reference to Sections



38 to 40 of the Act of 2005, which are quoted as hereunder :
WEB COPY

"38. State Government to take measures. —

(1) Subject to the provisions of this Act, each State Government shall take all measures specified in the guidelines laid down by the National Authority and such further measures as it deems necessary or expedient, for the purpose of disaster management.

2) The measures which the State Government may take under sub-section (1) include measures with respect to all or any of the following matters, namely:—

(a) coordination of actions of different departments of the Government of the State, the State Authority, District Authorities, local authority and other non-governmental organisations;

(b) cooperation and assistance in the disaster management to the National Authority and National Executive Committee, the State Authority and the State Executive Committee, and the District Authorities;

(c) cooperation with, and assistance to, the Ministries or Departments of the Government of India in disaster management, as requested by them or otherwise deemed appropriate by it;

(d) allocation of funds for measures for prevention of disaster, mitigation, capacity-building and preparedness by the departments of the Government of the State in accordance with the provisions of the State Plan and the District Plans;

(e) ensure that the integration of measures for prevention of disaster or mitigation by the departments of the Government of the State in their development



WEB COPY

plans and projects;

(f) integrate in the State development plan, measures to reduce or mitigate the vulnerability of different parts of the State to different disasters;

(g) ensure the preparation of disaster management plans by different departments of the State in accordance with the guidelines laid down by the National Authority and the State Authority;

(h) establishment of adequate warning systems up to the level of vulnerable communities;

(i) ensure that different departments of the Government of the State and the District Authorities take appropriate preparedness measures;

(j) ensure that in a threatening disaster situation or disaster, the resources of different departments of the Government of the State are made available to the National Executive Committee or the State Executive Committee or the District Authorities, as the case may be, for the purposes of effective response, rescue and relief in any threatening disaster situation or disaster;

(k) provide rehabilitation and reconstruction assistance to the victims of any disaster; and

(l) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of provisions of this Act.

39. Responsibilities of departments of the State Government. —It shall be the responsibility of every department of the Government of a State to—

(a) take measures necessary for prevention of disasters, mitigation, preparedness and capacity-



WEB COPY

building in accordance with the guidelines laid down by the National Authority and the State Authority;

(b) integrate into its development plans and projects, the measures for prevention of disaster and mitigation;

(c) allocate funds for prevention of disaster, mitigation, capacity-building and preparedness;

(d) respond effectively and promptly to any threatening disaster situation or disaster in accordance with the State Plan, and in accordance with the guidelines or directions of the National Executive Committee and the State Executive Committee;

(e) review the enactments administered by it, its policies, rules and regulations with a view to incorporate therein the provisions necessary for prevention of disasters, mitigation or preparedness;

(f) provide assistance, as required, by the National Executive Committee, the State Executive Committee and District Authorities, for—

(i) drawing up mitigation, preparedness and response plans, capacity-building, data collection and identification and training of personnel in relation to disaster management;

(ii) assessing the damage from any disaster;

(iii) carrying out rehabilitation and reconstruction;

(g) make provision for resources in consultation with the State Authority for the implementation of the District Plan by its authorities at the district level;



WEB COPY

(h) make available its resources to the National Executive Committee or the State Executive Committee or the District Authorities for the purposes of responding promptly and effectively to any disaster in the State, including measures for—

(i) providing emergency communication with a vulnerable or affected area;

(ii) transporting personnel and relief goods to and from the affected area;

(iii) providing evacuation, rescue, temporary shelter or other immediate relief;

(iv) carrying out evacuation of persons or live-stock from an area of any threatening disaster situation or disaster;

(v) setting up temporary bridges, jetties and landing places;

(vi) providing drinking water, essential provisions, healthcare and services in an affected area;

(i) such other actions as may be necessary for disaster management.

40. Disaster management plan of departments of State. —

(1) Every department of the State Government, in conformity with the guidelines laid down by the State Authority, shall—

(a) prepare a disaster management plan which shall lay down the following:—

(i) the types of disasters to which different parts of the State are vulnerable;



WEB COPY

(ii) integration of strategies for the prevention of disaster or the mitigation of its effects or both with the development plans and programmes by the department;

(iii) the roles and responsibilities of the department of the State in the event of any threatening disaster situation or disaster and emergency support function it is required to perform;

(iv) present status of its preparedness to perform such roles or responsibilities or emergency support function under sub-clause (iii);

(v) the capacity-building and preparedness measures proposed to be put into effect in order to enable the Ministries or Departments of the Government of India to discharge their responsibilities under section 37;

(b) annually review and update the plan referred to in clause (a) and;

(c) furnish a copy of the plan referred to in clause (a) or clause (b), as the case may be, to the State Authority.

(2) Every department of the State Government, while preparing the plan under sub-section (1), shall make provisions for financing the activities specified therein.

(3) Every department of the State Government shall furnish an implementation status report to the State Executive Committee regarding the implementation of the disaster management plan referred to in sub-section (1)."



WEB COPY

37. The provisions aforesaid fix responsibility on the State Government to take care of the situation during disaster for its management and to take steps and pass orders appropriate to the situation. Further, the State Government has been issuing orders from time to time to address the situation of Covid-19 Third Phase. They are taking all measures to see that pandemic may not spread. The efforts of the State Government for that purpose are appreciated. In the light of the above, we do not find that there is non compliance of Sections 38 to 40 of the Act of 2005 or otherwise, for holding the elections for the urban local bodies, any of the provisions of the Act of 2005 would be infringed. Rather, the petitioners failed to place on record any order of the State Government in that regard with an allegation of violation.

38. The prayer is not made in the writ petitions even to direct the State Government to pass orders under the Act of 2005 appropriate to the situations, which include restrain of the nature, as prayed by the petitioners. In view of the above, we do not find



WEB COPY

that the reference to the aforesaid provisions is of any assistance to the petitioners.

39. A reference to Article 47 of The Constitution of India has been given. It is no doubt true that it is the duty of the Government to take care of public health. It is not the case of the petitioners that the State Government failed to take precautions as envisaged under Article 47 of The Constitution of India, in the absence of which, we do not find the reference to Article 47 of The Constitution of India is of any consequence. It cannot be with reference to the action of the State Election Commission also.

40. We have already referred to the order passed by the State Election Commission on 10.12.2021 as to how campaigning of the elections should be held. The State Election Commission has also taken care of the present situation and thereby issued appropriate directions.

41. The learned counsel for the respective petitioners submit



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

that the order dated 10.12.2021 was passed by the State Election Commission at the time when the Covid-19 Third Phase was not at the peak and therefore, it is not taking care of the present situation.

WEB COPY

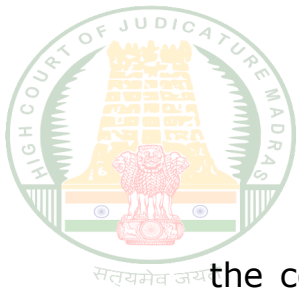


WEB COPY

42. We find aforesaid argument for the sake of it, as none of the learned counsel could make a suggestion apart from what had been directed by the State Election Commission in paragraph 9 of the order dated 10.12.2021.

43. This Court, however, took cognizance of the issue raised by the petitioners; so also the order passed by the State Election Commission to see that the directions given therein are complied by all the political parties apart from candidates contesting the elections. For such a purpose, this Court, while disposing of these matters, would keep the issue alive to see that if elections are notified, the compliance of protocol as envisaged by the State Election Commission is strictly made. Any violation thereupon can be brought to the notice of this Court for passing appropriate orders to provide all safeguards to the citizens due to Covid-19 pandemic Third Phase.

44. In view of the above, while passing a final order in these writ petitions, we will keep the issue alive not only with regard to



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

the consequence given in sub-paragraph 12 of paragraph 9 of the order dated 10.12.2021, but also to pass any other appropriate orders in case of failure to comply with the directions of the State Election Commission.

45. These matters need to be examined even with reference to the Constitutional mandate for holding the elections. While passing the order dated 27.9.2021, the Supreme Court directed the State Election Commission to hold elections within four months. The Constitutional mandate cannot be ignored altogether and only for the reason that the elections have not been held for a period of five years from 2016. The failure does not mean to be replicated or extended further. Rather, a serious view is required to be taken. The Constitutional mandate cannot be ignored by the Constitutional Bodies like the State Election Commission. They owe a higher responsibility to comply with the Constitutional mandate. A duty is cast upon to comply with the Constitutional mandate not by the ordinary citizens, but by the Constitutional Authority itself. In view of the above, we find it difficult to accept any of the arguments



सत्यमेव जयते raised by the petitioners.

WEB COPY

46. At this stage, we would be referring to the order dated 01.12.2021 passed in W.P.No.22288 of 2021 etc. The order has been referred to by the petitioners to urge that for a period of two weeks, interim order may be granted.

47. We have gone through the order dated 01.12.2021 and find that the facts in that case were quite different from the facts of these cases. In the said case, this Court, while entertaining the writ petitions, passed interim orders and it was continued from time to time. When the matter came up before this Court on 01.12.2021, it was realized that as per the Constitutional mandate, the elections are required to be conducted and directions were given by the Apex Court to hold elections within a time frame. The issue therein was regarding deferment of the elections in the absence of identification and notification of OBC category and therefore, the elections were not notified. However, taking into consideration the peculiar facts of the case and more particularly with regard to the fact that



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

reservation to OBC category was yet to be notified by the Union Territory of Puducherry, the interim order operating in the said writ petitions was extended for a period of two weeks.

48. In the instant case, no interim order has been granted and this Court is informed about the order passed by the Apex Court dated 27.9.2021. The order dated 27.9.2021 cannot be ignored and for that purpose, we have discussed all the issues raised by the petitioners.

49. We do not find any ground to direct the petitioners to approach the Supreme Court for extension for the elections. In fact, it was upto the petitioners to take the remedy aforesaid, for which, it was indicated by the Court at the initial stage itself. It is the petitioners, who chose to file these writ petitions before this Court instead of approaching the Apex Court. Accordingly, the matter has been considered after hearing the petitioners. Finding that this Court cannot issue any direction for postponement of the elections by going against the directions of the Apex Court, we are unable to



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

grant the relief prayed by the petitioners.

WEB COPY

50. Accordingly, the above writ petitions are disposed of with a direction to the State Election Commission that if a Notification is issued for holding elections, the elections shall be conducted by strictly following the directions given in the order dated 10.12.2021. The State Election Commission is at liberty to issue any other appropriate direction prior to the issuance of Notification and subsequent to it addressing the situation of Covid-19 pandemic Third Phase and see that whatever directions issued/to be issued by the State Election Commission are properly complied with, without compromising the health of the citizens and the voters of the State of Tamil Nadu. This Court would see that the compliance is made properly. Consequently, the connected WMPs are closed. There will be no order as to costs.

51. We record our appreciation with regard to the assistance given by all the senior counsel appearing for the parties.



WEB COPY

52. Registry is directed to list these matters again, ten days immediately after the issuance of Notification for elections to the urban local bodies.

(M.N.B., ACJ) (P.D.A., J.)
25.01.2022

Index : Yes/No

To:

- 1.The Principal Secretary to Government
State of Tamil Nadu
Health and Family Welfare
Department Fort St. George, Secretariat, Chennai-9.
- 2.The State Election Commissioner,
100 Feet Ring Road, Vadapalani, Chennai-26.
- 3.The Secretary
State Election Commission,
100 Feet Ring Road,
Vadapalani, Chennai-26.
- 4.The Principal secretary to Government
State of Tamil nadu
Municipal Administration and
Water Supply (Election) Department Fort St.
George, Secretariat, Chennai-9.
- 5.The Secretary Government
Rural Development and Panchayat Raj
Department Government of Tamil Nadu
Fort St. George Secretariat, Chennai-9.



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

WEB COPY

6. The Principal Secretary to Government
State of Tamil Nadu
Municipal Administration and Water Supply
Department Fort St. George
Chennai-9.
7. The Chief Secretary of Tamil Nadu
Rep by its Secretary Secretariat
Fort St. George Chennai
8. The Secretary
Tamil nadu Revenue Disaster Management
Tamil Nadu State Election commission, Secretariat
Fort St. George, Chennai.

RS



WEB COPY

WWW.LIVELAW.IN



W.P.Nos.736, 953, 958, 1201 & 1268 of 2022

M.N.BHANDARI, ACJ
AND
P.D.AUDIKEVALU, J

RS

W.P.Nos.736, 953, 958, 1201 & 1268
of 2022 & WMP.Nos.807, 1019 & 1376
of 2022

25.1.2022