

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7698 of 2021

Dravida Munnetara Kazhagam  
rep. by its Organising Secretary  
R.S.Bharathi  
Anna Arivalayam  
No.367 & 369, Anna Salai  
Chennai 600 018.

... Petitioner

Vs.

1. The Election Commission of India  
rep. by its Chief Election Commissioner  
Office of the Election Commission of India  
Nirvachan Sadan, Ashoka Road  
New Delhi 110 001.

2. The Chief Electoral Officer, Tamil Nadu  
Secretariat, Chennai 600 009. ... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for a writ of Mandamus directing the respondents to consider and pass orders on the representation of the petitioner dated 10.03.2021 and

consequently direct the respondents herein (a) to use the EVMs manufactured recently and not to use any machine which are beyond the expiry period of 15 years, (b) to provide CCTV live coverage / live web stream during voting in all polling booths and voting centers of Election Commission, (c) to install jammers at the strong rooms where EVMs are stored including before and after voting, and at the counting centres during counting, and (d) to direct the Returning Officer to count at least 50% of VVPATs simultaneously in the upcoming elections to the Legislative Assembly of Tamil Nadu to be held on 06.04.2021.

For Petitioner : Mr.P.Wilson, S.C.  
For P.Wilson Associates

For Respondents : Mr.Niranjan Rajagopalan

**ORDER**

(Made by the Hon'ble Chief Justice)

The petitioner political party seeks divers directions to ensure a fair and proper conduct of the forthcoming elections to the State Assembly.

2. On this present petition, a somewhat detailed order was passed on March 24, 2021. The several areas of concern expressed by the petitioner were individually addressed in the order and other directions were issued to the Election Commission of India to ensure a particular course of action in some areas or the Election Commission was required to consider the matter relating to certain other aspects and report to Court. The principal point canvassed on behalf of the petitioner on March 24, 2021 was the CCTV coverage of critical events. Certain directions were issued and the Election Commission was requested to obtain inputs from the major political parties in such regard. The second contention of the petitioner pertained to electronic voting machines and the petitioner suggested that EVMs older than 15 years may not be used. The third aspect emphasised by the petitioner was that not only should there be foolproof guarding of the EVMs after the poll had been conducted, but there should be pre-poll guarding of the machines as well, including CCTV coverage. The two incidental requests by the petitioner were for jammers to be installed outside the strong-rooms where the EVMs were stored and for Rule 66A of the Conduct of Election Rules, 1961 to be followed in the matter pertaining to counting of VVPATs.

3. The directions issued by this Court on March 24, 2021 covered all such aspects referred to by the petitioner. The Election Commission was requested to obtain the views of the recognised political parties as to which would be the critical polling booths and which areas may be labelled as vulnerable, since political parties invariably have a better feel for such matters than an apolitical agency. As far as jammers were concerned, the Election Commission was requested to consider the matter. The Court also stressed that the pre-poll guarding of the EVMs was equally important. On the matter of paper trail, the Election Commission's submission was recorded and the Election Commission was directed to take appropriate measures.

4. In accordance with the relevant direction contained in the order of March 24, 2021, a meeting of at least 12 political parties was convened on March 26, 2021 to obtain their views, including as to which of the booths would be critical and which of the areas vulnerable. A letter appears to have been issued on March 26, 2021 by the Chief Electoral Officer of the State to all the Returning Officers referring to the order dated March 24, 2021 and requiring the process

of consultation to be undertaken with political parties to identify the critical booths and the vulnerable areas. Even that part of the order, which required the Election Commission to inform the political parties as to which booths would be regarded as critical and which areas vulnerable, was directed to be complied with by all the Returning Officers.

5. A counter-affidavit has been filed by the Election Commission. The counter-affidavit details all the measures taken, particularly in the light of the apprehension expressed by the petitioner herein and dealt with by the order of March 24, 2021. The petitioner has further concerns and an elaborate argument has been made for specific directions to be issued to the Election Commission on several counts.

6. Six aspects have been highlighted by the petitioner and directions invited in respect of all of them. The first prayer is for a direction on the Election Commission to supply the complete list of critical booths and vulnerable areas to all political parties. The second aspect is for the Court to record the submission of the Election Commission in the counter-affidavit to the effect that only voting

machines manufactured in or after 2017 would be used for the present State Elections. The third point stressed by the petitioner is for directions or guidelines to be issued by the Chief Electoral Officer to the Returning Officers delineating the role of the Returning Officers under Rule 66A of the said Rules of 1961, covering Rule 56D as incorporated in Rule 66A.

7. Much has also been made of the need for the pre-poll monitoring of EVMs and the guarding thereof. Several passages have been read out from the Election Commission's 500-page "Handbook for Returning Officer" published in February, 2019 and the Election Commission's 150-page "Manual of Electronic Voting Machine and VVPAT". The entire endeavour in such regard is to require the Election Commission to guard the EVMs and ensure that they are not tampered with as assiduously at the pre-poll stage as it plans to do after the votes go into the machines. In particular, paragraph 6.1.1 from the Manual has been placed to assert that video recording is provided for in respect of the EVMs even at the pre-poll stage. Paragraph 12.3.16 of the Handbook has been placed to indicate the emphasis on round-the-clock security at even the pre-poll stage to guard the EVMs.



Several other passages from the Manual and the Handbook, including Annexure 14 from the Manual, have been relied upon though such instructions appear to pertain to the post-voting stage.

8. It appears that the petitioner apprehends that the EVMs that may be brought to the polling stations on or immediately before the polling day may already have votes polled in them. The fervent appeal that has been made to the Court for the monitoring of the machines before polling obviously betrays such apprehension.

9. The other two grounds urged by the petitioner pertain to CCTV in polling booths and the use of jammers outside polling stations and places where the EVMs may be stored, both prior to polling and post-poll.

10. The Election Commission's counter-affidavit demonstrates a kind of clarity not generally associated with affidavits filed by the officialdom. Several aspects of the order dated March 24, 2021 have been specifically dealt with, by referring to the applicable guidelines and the measures taken in such regard.

11. The matter must be approached with a degree of reasonableness and it must be appreciated given the logistics, the conditions on the ground, the second wave of the surging pandemic and the financial restraints, it may not be possible for a completely foolproof plan of action to be charted out and the Election Commission would have done well if it reduces the scope of tampering or lessens the doubts in the minds of the participants and conveys a general sense of strict adherence to the guidelines. Towards such end, the counter-affidavit filed by the Election Commission and the specific replies to the queries raised by the Court apropos the areas of concern expressed by the petitioner, indicate a satisfactory level of preparedness on the part of the Election Commission that should dispel all apprehensions and even allay legitimate misgivings.

12. On the aspect of identification of critical polling booths and vulnerable areas, the Electoral Officers in the Districts of Tiruppur and Dindigul appear to have made the details available to the recognised political parties. In the light of such apparently transparent conduct, the petitioner has questioned why the details pertaining to other



districts have not been circulated to the recognised political parties. The Election Commission has carried the full details of every booth which has been identified as critical or vulnerable in a sealed cover to this Court, that has been promptly returned unopened. According to the Election Commission, close to 11,500 polling booths have been identified as critical or vulnerable, the exact number being 10813 regarded as vulnerable and 537 as critical.

13. The Election Commission assures the Court that there will be 100% web-casting of the entire activities on polling day at the critical and vulnerable polling booths. The Election Commission also informs the Court that over 44,000 polling booths, covering more than 50% of the total polling stations in the State, would be covered by web-casting. However, the monitoring of the activities on the virtual platform will be undertaken only by the Election Commission officials and no outsider will be allowed to participate real time, though the recordings may be available for inspection subsequently.

14. The Election Commission is of the opinion that information pertaining to identification of the critical and vulnerable polling booths

should not be shared with political parties on the grounds of security. The Election Commission concedes that two of the District Electoral Officers had released the information by mistake and seeks permission from the Court to not release such particulars in respect of the other districts.

15. On the second ground which has been highlighted by the petitioner, the Election Commission confirms that as stated in its counter-affidavit, M3 voting machines would only be used, which have been manufactured in 2017 and later.

16. Regarding counting of the paper trail, the Election Commission says that the random counting in accordance with the Supreme Court directions would be conducted and such random counting has no nexus with the specific power conferred under Rule 66A of the said Rules, particularly pertaining to Rule 56D as covered within Rule 66A of the said Rules. Thus, there can be no apprehension on the part of the petitioner that the Returning Officers may refuse to count the paper trail on frivolous grounds because there would be the usual random counting thereof. However, the petitioner is reminded

that certain parameters apply and the Handbook indicates what would be the circumstances that may prompt the Returning Officer to accede to a request for a total count or partial count of the paper trail. An arbitrary or whimsical request by a political party to stall the election process or to merely desire that the paper trail should be counted to amuse the candidate, may not be a good ground for the Returning Officer to accede to such request.

17. The apprehension of the petitioner pertaining to the lack of guarding of the EVMs at the pre-poll stage appears, in the final analysis, to be much ado about nothing. It appears that the petitioner's apprehension gained ground from the manner in which the counter-affidavit is worded in such regard, the entire emphasis in such counter-affidavit being on the post-poll protection of the EVMs. The Election Commission says that the pre-poll guarding of the EVMs would be conducted in accordance with the Manual. In addition, the Election Commission informs the Court that each EVM handed over to a polling booth is checked before the polling starts and only if it reveals nil votes, the machine will be used. The Election Commission says that every EVM is sealed and the candidates' signatures are obtained across

the seal and the seals are not broken or opened till the period of limitation after the conduct of the polls runs out and no challenge to the election in the relevant constituency has been made.

18. The fifth aspect pertaining to CCTV in polling booths has already been covered by the Election Commission's submission pertaining to 100% web-casting of the critical and vulnerable booths, which are included in the overall figure of 44,000 polling booths where web-casting facilities would be available and the entire activity monitored during the polling day.

19. As to the petitioner's request for jammers, the Election Commission says that the EVMs cannot be tampered by any wi-fi or radio device. The Election Commission says that it is also its practice to cut off supply inside the strong-rooms where the EVMs are stored, both at the pre-poll and at the post-poll stages, not because the machines are affected by any electrical activity, but to ensure that there is no cause for fire by any short-circuit of the lines. The Election Commission points out that the several guidelines in its Manual and Handbook pertaining to prohibition of electronic devices in counting

rooms and storage areas or nearby, are by way of abundant caution and not in acknowledgment of electronic devices being capable of interfering with the EVMs in any manner or form.

20. The several aspects that have been alluded to on behalf of the petitioner appear to have been satisfactorily addressed on behalf of the Election Commission. It was necessary to record the areas of apprehension in great detail and the manner in which the Election Commission has gone about addressing the same to instill confidence of the people in the system that is in place and to allay the apprehension and the misgivings harboured in certain quarters. In the light of work done by the Election Commission, it is granted permission not to circulate the details pertaining to the vulnerable or critical booths for the districts other than the two referred to earlier. At the end of the day, the elections must not only have been conducted in a fair and transparent manner, but it also must be seen to have been so done.

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21. W.P.No.7698 of 2021 is disposed of. There will be no order as to costs. WMP No.8246 of 2021 is closed.

22. It is hoped that this day next week will pass off as peacefully and uneventfully as today seems to be going. However, the Election Commission should be alert and pro-active and, most importantly, ensure that the second surge of the pandemic is not accelerated by the activities undertaken on election day.

(S.B., C.J.) (S.K.R., J.)  
30.03.2021

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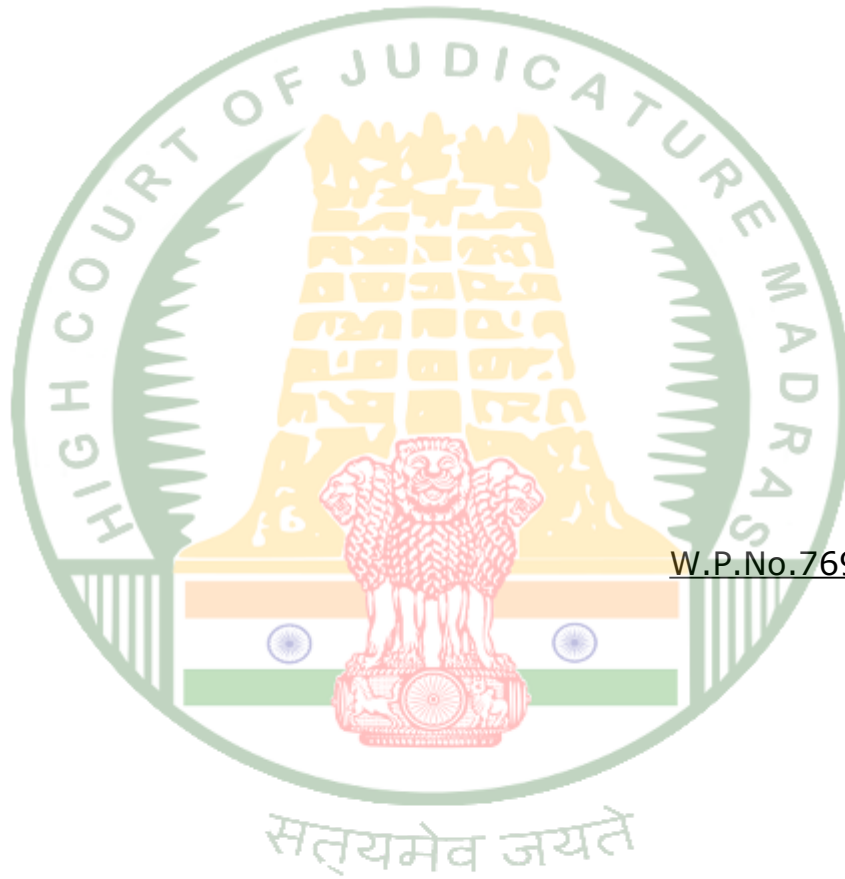
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New Delhi 110 001.
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SENTHILKUMAR RAMAMOORTHY, J.

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