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THE HIGH COURT OF MADHYA PRADESH

W.P. No. 8755/2021

(Phool Chand Paliwal and others vs. Union of India and others)

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Jabalpur, Dated: 26.04.2021

Heard through Video Conferencing.

Petitioners – Shri Phool Chand Paliwal and Shri Umesh Trivedi,
Advocates appeared in person through video conferencing.

Mr. J.K. Jain, Assistant Solicitor General for the respondent
No.1-Union of India.

Mr. P.K. Kaurav, Advocate General for the respondent No.2-
State.

Mr. Siddharth Seth, Advocate for the respondent Nos.3 and 4 –
Election Commission of India & State Election Commission, M.P.

The petitioners have submitted that action be taken against the Election Commission of India and State Election Commissions for conducting elections for the Legislative Assembly of Damoh (Madhya Pradesh) and so also for conducting elections for the State Legislative Assemblies of West Bengal, Assam, Tamil Nadu, Pondicherry and Kerala, during the ongoing second wave of Covid-19 by violating the Covid protocol and guidelines. A prayer has also been made in the writ petition that proper directions be issued for stopping the door to door election campaigns and election meetings and gatherings. It is also prayed that the respondents be commanded to take immediate steps to prevent the spread of Coronavirus and take action for its eradication.

Mr. Siddharth Sethi, learned counsel appearing for the respondent Nos.3 and 4 – Election Commission of India and State Election Commission, MP respectively submitted that insofar as the election in other States is concerned, the said issue would not fall within the territorial jurisdiction of this Court. Regarding by-election for State Legislative constituency Damoh (Madhya Pradesh), his submission is that polling has already taken place on 17.04.2021 and counting shall take place on 02.05.2021. Learned counsel further submitted that all other issues with regard to the spread of Coronavirus and steps required to be taken therefor, a detailed order has already been passed by this Court in W.P. No.8914/2020 [*In Reference (Suo Motu) vs. Union of India and others*] on 19.04.2021 and compliance of the directions issued is being monitored by this Court, therefore, this writ petition need not be entertained.

The petitioner - Shri Umesh Trivedi, relying upon the judgment of the Supreme Court in ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others*** (AIR 1978 SC 851), submitted that the election process commences from the date of issue of initial notification and concludes with the declaration of result. Therefore, as the result of the election of Damoh constituency has not been declared so far, the process of election should be taken as continuing one and the writ petition can be entertained by this Court even now to nullify the entire process, since the entire process of election is marred by number of illegalities. It is argued that since several political workers, leaders and passengers were going to and coming from West Bengal, Assam, Tamil Nadu, Pondicherry and

Kerala by various trains, by air and by road, part cause of action should be taken to have arisen within the territorial jurisdiction of this Court even in respect of other States. It is also argued that the State Government is not taking effective steps for preventing the spread of Coronavirus, inasmuch as, various medicines including Remdesivir, are being sold in market at a very high price and weaker sections of societies especially Scheduled Castes and Scheduled Tribes are worst hit and dying due to Coronavirus.

Having heard Mr. Umesh Trivedi (petitioner No.2 herein), Mr. P.K. Kaurav, learned Advocate General for the State and Mr. Siddharth Seth, learned counsel for the Election Commission of India and State Election Commission, M.P. and on perusing the aforesaid judgment, we find that the ratio of the relied judgment does not have any application to the present fact situation. The Constitution Bench of the Supreme Court in **Mohinder Singh Gill (supra)** do indeed held that amplitude of powers and width of functions to be exercised by Election Commission under Article 324 of the Constitution of India confers the power on the Election Commission to cancel the poll in the entire constituency. The Supreme Court in that case relied on the earlier Constitution Bench judgment in *N.P. Ponnuswami vs. Returning Officer, Namakkal (AIR 1952 SC 64)* and observed that its ratio has been consistently followed in subsequent judgments of the Supreme Court. While interpreting Article 329(b) of the Constitution of India, which provides that “no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition

*presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature” held that “every step from start to finish of the total process constitutes ‘election’, not merely the conclusion or culmination”. The Supreme Court further held that there is non-obstante clause under Article 329 of the Constitution of India and, therefore, Article 226 of the Constitution stands pushed out where the dispute takes the form of polling in question and election except in special situations pointed at but left unexplored in **N.P. Ponnuswami (supra)**. Ratio of the aforesaid judgment cannot be applied to Damoh by-election which in any case has already taken place on 17.04.2021 and it rather mandates that no interference be made by this Court during the process of election.*

We do not want to entertain the present dispute in respect of the elections which had taken place in the other States on the specious plea that mere travel of political leaders, party activists or passengers by trains, by air or even by road, to and from, those States would confer territorial jurisdiction of the dispute upon this Court. However, while disposing of the writ petition, we direct the respondents including Collector, Damoh to ensure that the guidelines of the Central Government as well as the State Government with regard to the Coronavirus for maintaining the norms of social distancing, use of masks and sanitizers shall be strictly adhered to by all those, who take part in the process of counting and that no crowd, at or near the counting centre, shall be allowed to assemble, inasmuch as, no political party or candidate, shall be allowed to carry out any

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victory procession in the crowd, either on foot or by vehicles rally, and that special care shall be taken to ensure that no such political activity takes place on account of the declaration of the result on the day of counting which may, in any manner, contribute to or have the effect of spreading the Coronavirus.

Insofar as the situation of Coronavirus in the State is concerned, this Court had already initiated *suo motu* proceeding in W.P. No.8914/2020 during the first wave of pandemic of Covid-19 and in that matter has already passed detailed orders giving various directions to the State Government vide order dated 19.04.2021 in the aforesaid petition along with several other petitions. The matter has been heard separately today and posted on 28.04.2021 seeking response of the State Government on various suggestions given by the learned *Amicus Curiae* and the intervenors and the State Government has been called upon to file its action taken report. In view whereof, we do not wish to entertain the present writ petition on that aspect either.

In view of the foregoing reasons, the present writ petition is **disposed of** with however the aforesaid directions. There shall be no order as to costs.

(Mohammad Rafiq)
Chief Justice

(Atul Sreedharan)
Judge

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