

(2001) 04 MAD CK 0089

In the Madras High Court

Case No : Writ Petition No. 5235 of 2001 and W.M.P. No. 7467 of 2001

P. Gajapathi

APPELLANT

Vs

Election Commission of India

RESPONDENT

Date of Decision : 02-04-2001

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 35, 37(1)
Registration of Electors Rules, 1960 — Rule 28
Representation of the People Act, 1951 — Section 61

Citation : AIR 2001 Mad 446 : (2001) 3 LW 291 : (2001) WritLR 623

Hon'ble Judges : N.K. Jain, C.J;K. Sampath, J

Bench : Division Bench

Advocate : Nalini Chidambaram, Revathi and Indra and Herald Singh, for the Appellant; G. Rajagopalan, for Chandrasekaran and Thangamani, for the Respondent

Judgement

N.K. Jain, C.J.—This writ petition is filed for the issue of a Writ of Prohibition forbearing the respondent, the Election Commission, from insisting upon the production of Elector's Photo Identity Cards (EPIC) as a condition precedent for casting their votes in the ensuing elections for the State Legislative Assembly.

2. The petitioner is alleged to be the President of the Thinkers' Forum, an association of intellectuals. It is stated in the petition that the respondent is insisting upon the EPICs as a condition precedent for exercising their franchise. It is further submitted that all the voters, whose names are borne out on the electoral rolls should have been issued with EPICs, but due to lack of infrastructural facilities and inherent technical snags, hardly 65% of the voters could be covered by the EPIC programme. Insisting upon the production of EPIC as a condition precedent for casting vote, would deprive nearly 30 to 35% in every constituency, of their right to vote, and would affect their legitimate democratic right to exercise their franchise. The issuance of photo identity card has not been completed even in a single constituency in the State if the authorities are not satisfied with the identity of the voters, they could be asked

to prove their identity by producing their ration cards, driving licenses, passports etc. It is further submitted that every person, whose name is found in the electoral roll, should be permitted to cast his allowed to vote without insisting on the production of EPIC. Hence, he has prayed for the relief as stated above.

3. This writ petition came up for admission on 21-3-2001, and notice was taken for the respondent, and counter was filed on 29-3-2001 and heard on 30-3-2001.

4. The respondent has filed a detailed counter denying the averments made in the writ petition. Learned counsel for the respondent submits that the petition in the garb of Public Interest legitimate cannot stall the forthcoming elections. The respondent has also filed a status report of the progress of issue of EPIC and submitted that more than 400 million voters have already been issued with EPICs as against 600 million voters. It is submitted that the writ petition as framed did not make out a case for the issuance of Writ of Prohibition, when there is no question of any inferior tribunal or Court usurping the jurisdiction, involved in the writ petition. Extracting Section 61 of the Representation of the People Act, Rules 35 and 37 (2) (b) of Conduct of Election Rules 1961, and Rule 28 of the Registration of the Electors Rolls, it is submitted that the assumption of the petitioner that the EPIC was mandatorily required to be produced even where it had not even been issued, was totally misconceived. When none of the above provisions has been challenged, the prayer to prevent the respondent from Insisting upon the EPICs for the persons who have been issued with photo identity cards is untenable. A direction has been issued by the respondent that those who have been supplied with EPIC alone would be asked to produce the identity cards and those who have not been supplied with EPICs would be asked to produce other documents.

5. We have heard the learned counsel for the parties and perused the records. No doubt, a writ of prohibition is not a writ of course. It is a writ of right and not merely discretionary in character. So, the question remains as to when it can be issued. Writ of Prohibition can be issued when there is a defect of the jurisdiction apparent on the face of the proceedings and it can be issued if the authority exceeded the jurisdiction or assumed jurisdiction when there is no jurisdiction.

6. The Election Commission is the authority competent to hold elections in a fair and independent manner, and it has to ensure that all eligible voters cast their votes.

7. The identity cards for voters are designed to avoid impersonation during elections. As stated by the respondent, as early as in the year 1958, Section 61 of the Representation of the People Act, was amended to provide for issuance of identity cards. EPIC programme is a massive exercise, the cost of which is shared equally by the Central Government and the State Governments. As pointed out, despite the best efforts, the respondent could not cover the entire voters in all the constituencies. The respondent has admitted that when EPIC had not been issued to all persons, no question of insisting upon all to produce EPIC

arises. To our mind, otherwise also, no question of insisting upon the EPIC arises as a condition precedent for those who are not in a position to produce EPIC for want of issuance to them, for casting their votes. However, such voters are entitled to cast their votes, if their names are in the electoral rolls. Such persons can satisfy the authorities by producing the ration cards, driving licence, passports, other photo identity cards, identity certificate with father's name issued by the Village Administrative Officer and other documentary proof to establish their identity as per the electoral roll and genuineness. Though one has a right to exercise his franchise, but at the same time, he must satisfy that he is the person whose name is found in the electoral rolls.

8. On consideration, in the interest of justice, we hereby direct that

a) the individual voter in the respective constituencies, whose name is in the voters' list in the respective constituencies must bring his Election Photo Identity Card, if already issued to him and produce it for casting his votes.;

b) the individual voter in the respective constituencies having his name in the electoral roll but not issued with EPIC may produce ration card, driving licence, passport, other photo identity card or identity certificate containing the name and father's name with age and address issued by the Village Administrative Officer, or any other documentary proof to the satisfaction of the Polling Officer and to show his identity and genuineness as per the voters' list;

c) the Election Commission shall direct all the Presiding Officers or the Polling Officers to allow individuals in respective constituencies to cast their votes if they are satisfied that such persons are identical with the electors to whom such entries relate, as per the above directions 1 and 2, as the case may be; and

d) The Election Commission shall Issue such instructions and make publicity through all possible media in clear terms at the earliest repeatedly that all those who have been issued with EPIC should bring with them the EPI Cards and those who have not been issued with EPI Cards should bring other proofs as stated above for casting their votes in the ensuing election in the State of Tamil Nadu so that individual voter will act accordingly.

9. Under these circumstances, it is not necessary to go into the question of maintainability of the writ petition on factual and legal aspect.

10. The writ petition and the W.M.P. No. 7467 of 2001 are disposed of with above observations.