

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

SATURDAY, THE 03RD DAY OF APRIL 2021/13TH CHAITHRA, 1943

WP(C).No.8891 OF 2021

PETITIONER:

SHANIMOL USMAN
AGED 54 YEARS
W/O.ADV.A.MOHAMMED USMAN, CANDIDATE,
ARoor LEGISLATIVE ASSEMBLY CONSTITUENCY,
ALAPPUZHA DISTRICT,
RESIDING AT POOPPARAMBIL HOUSE, ALUSSERY WARD,
HEAD POST OFFICE, ALAPPUZHA - 688 001.

BY ADVS.
SRI.GEORGE POONTHOTTAM (SR.)
SRI.A.L.NAVANEETH KRISHNAN
SMT.NISHA GEORGE

RESPONDENTS:

- 1 THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD,
NEW DELHI - 110 001,
REPRESENTED BY ITS SECRETARY.
- 2 THE CHIEF ELECTORAL OFFICER
KERALA, ELECTION DEPARTMENT,
KERALA LEGISLATIVE COMPLEX,
VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM - 695 033.
- 3 THE RETURNING OFFICER
NO.102, AROOR ASSEMBLY CONSTITUENCY,
(JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL)), MULLAKKAL, ALAPPUZHA,
ALAPPUZHA DISTRICT - 688 011.

R1-3 BY ADV. SHRI.DEEPULAL MOHAN, SC, ELECTION
COMMISSION OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.04.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

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Dated this the 3rd day of April, 2021

The petitioner, who is a candidate contesting in Aroor Legislative Assembly Constituency, is before this Court seeking to direct the 1st respondent to permit videography of the polling proceedings in booths, where there are double votes, at the expense of the petitioner, in terms of the directions issued by the 1st respondent. Incidental reliefs are also sought for.

2. The petitioner would contend that there are more than 2573 double votes in the Constituency where the name of voters appears more than in one place. Ext.P1 is a list drawn by the petitioner in respect of such double votes. The petitioner submitted Ext.P3 letter to the Chief Electoral Officer requesting to take necessary steps to avert the possibility of double voting. However, no positive action is taken,

contended the petitioner.

3. The petitioner would point out that as per Ext.P4 Circular dated 17.01.2007 of the Election Commission of India, video or digital photography of the proceedings inside the polling station is permitted. The petitioner further pointed out that a Division Bench of this Court has considered the issue of large scale double votes, in W.P.(C) No.8034/2021 and has given general directions to avert double voting by any voter.

4. The learned Senior Counsel assisted by the counsel for the petitioner, relying on the judgment in ***Janak Singh v. Ram Das Rai and others*** [(2005) 2 SCC 1], argued that the Hon'ble Apex Court has suggested deployment of Central Paramilitary Forces not only for keeping law and order situation outside the polling booths but also inside the polling stations and vote counting centres, so that local administrative staff cannot use the powers available to them in favour of any candidate. The Apex Court also suggested installation of electronic gadgets for video recording and its exhibition and

close circuit cameras inside the polling station. The Apex Court as well as this Court were conscious of the fact of electoral manipulations by double voting and it is under such circumstances that the Apex Court in the judgment in ***Janak Singh v. Ram Das Rai and others*** (*supra*) and the Division Bench of this Court in W.P.(C) No.8034/2021 have given remedial suggestions/directions.

5. The learned Senior Counsel urged that the double vote in the Constituency of the petitioner is majorly concentrated in 39 booths and booth numbers of such polling booths are given in paragraph 10 of the writ petition. The learned Senior Counsel contended that if videography of the proceedings in these booths are permitted, the casting of double votes can easily be curbed.

6. The learned Standing Counsel for the Election Commission of India contended that the Election Commission has already made arrangements for webcasting of electoral proceedings in 46% of the polling stations. The Election Officers have made verification and an ASD list has been

given to all political parties. The political parties are also at liberty to give a list of such double votes, to the respondents. Voting by such voters, who have double votes, will be verified and monitored. These steps will be sufficient to prevent the likelihood of double voting.

7. The learned Standing Counsel further contended that Rule 49J of the Conduct of Elections Rules, 1961 provides for challenging of identity of electors. Learned Standing Counsel further pointed out that Rule 49K of the Conduct of Elections Rules provides for safeguards against personation. Every elector about whose identity the presiding officer or the polling officer, as the case may be, is satisfied, shall allow his left forefinger to be inspected by the presiding officer or polling officer and an indelible ink mark to be put on it. In the present elections to the State Legislative Assembly, the respondents have also directed that whenever a voter, who is allegedly having more than one vote, casts his vote in any polling booth, such voter will be made to remain in the polling station till the indelible ink is dried. This would be

sufficient safeguard against double voting, contended the learned Standing Counsel.

8. I have heard the learned Senior Counsel assisted by the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

9. As stated by the learned Standing Counsel for the 1st respondent, in 46% of the polling stations, arrangements are already made for webcasting of polling process. Other safeguards like exchange of ASD list have also been made.

10. The petitioner has pointed out certain polling booths where there are a large number of double votes. It is the apprehension of the petitioner that if any of those booths are not covered by 46% polling booths, where the Election Commission has already decided webcasting, then the double votes casted in the remaining booths may affect the result of the election. Therefore, in all the booths pointed out by the petitioner in paragraph 10 of the writ petition, either webcasting should be done or the candidates should be permitted to videograph the entire election process,

contended the learned counsel for the petitioner.

11. It is to be kept in mind that now only less than 72 hours are remaining for the conduct of polling. In such circumstances, there cannot be any mandatory direction to the Election Commission which would affect the free flow of election.

12. However, the respondents have a duty to see that double voting is not permitted and necessary effective remedial measures are taken following the general guidelines given by the Division Bench of this Court in W.P.(C) No.8034/2021.

In such circumstances, the writ petition is disposed of with a direction to respondents 1 and 2 to consider whether the polling booths identified by the petitioner in paragraph 10 of the writ petition are covered by the webcasting arrangements already made in 46% polling booths. If there are any booths mentioned in paragraph 10 of the writ petition remaining not covered by these arrangements already made, respondents 1 and 2 may consider the number of double

votes existing in those booths as indicated by the petitioner in the writ petition and consider the feasibility of webcasting or videographying the election process inside such polling booths.

Sd/-
N. NAGARESH, JUDGE

aks/03.04.2021

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE LIST SHOWING THE PERSONS HAVING DOUBLE VOTES INCLUDED IN THE VOTERS LIST PREPARED BY THE 1ST RESPONDENT FOR AROOR CONSTITUENCY.
EXHIBIT P2	TRUE COPY OF THE LIST SHOWING THE FATHER'S NAME/HUSBAND'S NAME OF SOME OF THE PERSONS INCLUDED IN EXHIBIT P1 LIST.
EXHIBIT P2 (A)	TRUE COPY OF THE RELEVANT PORTION OF THE VOTERS LIST IN BOOTH NO.88 OF AROOR ASSEMBLY CONSTITUENCY.
EXHIBIT P2 (B)	TRUE COPY OF THE RELEVANT PORTION OF THE VOTERS LIST IN BOOTH NO.156 OF AROOR ASSEMBLY CONSTITUENCY.
EXHIBIT P2 (C)	TRUE COPY OF THE RELEVANT PORTION OF THE VOTERS LIST IN BOOTH NO.96 OF AROOR ASSEMBLY CONSTITUENCY.
EXHIBIT P2 (D)	TRUE COPY OF THE RELEVANT PORTION OF THE VOTERS LIST IN BOOTH NO.101 OF AROOR ASSEMBLY CONSTITUENCY.
EXHIBIT P3	TRUE COPY OF THE LETTER DATED 10/03/2021 ISSUED BY THE PETITIONER TO THE CHIEF ELECTORAL OFFICER, KERALA.
EXHIBIT P4	TRUE COPY OF THE LETTER NO.447/2007-PLN-IV DATED 17/01/2007 ISSUED BY THE ELECTION COMMISSION OF INDIA.
EXHIBIT P5	TRUE COPY OF THE LETTER NO.464/INST/2009/EPS DATED 03/03/2009 ISSUED BY THE ELECTION COMMISSION OF INDIA.

EXHIBIT P6	TRUE COPY OF THE LETTER NO.33870/B1/2020/SEC DATED 09/11/2020 ISSUED BY THE STATE ELECTION COMMISSION.
EXHIBIT P7	TRUE COPY OF THE REPRESENTATION DATED 01/04/2021 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
EXHIBIT P8	TRUE COPY OF THE REPRESENTATION DATED 01/04/2021 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
EXHIBIT P9	TRUE COPY OF THE JUDGMENT DATED 31/03/2021 IN W.P.(C) NO.8629/2021 PASSED BY THIS HON'BLE COURT.