

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

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THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA, 1943

WP(C).No.8692 OF 2021(S)

PETITIONER:

P.P.KARUNAKARAN
AGED 73 YEARS
S/O KANNAN, RAMAKRISHNA BHAVAN,
P.O.VENGARA,KANNUR.

BY ADVS.
SRI.P.N.MOHANAN
SRI.C.P.SABARI
SMT.AMRUTHA SURESH

RESPONDENTS:

- 1 ELECTION COMMISSIONER OF INDIA
REPRESENTED BY ITS SECRETARY GENERAL,
NIRVACHAN SADAN,ASOKA ROAD, NEW DELHI-110 028.
- 2 CHIEF ELECTORCAL OFFICER(KERALA) ,
VIKAS BHAVAN,LEGISLATURE COMPLEX,
THIRUVANANTHAPURAM-695 033.
- 3 DISTRICT ELECTORAL OFFICER/DISTRICT COLLECTOR,
COLLECTORATE,KANNUR-670 002.

SRI.DEEPU LAL MOHAN (SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 31st day of March, 2021

S.Manikumar, C.J.

Instant Public Interest Litigation is filed by the President of Madai Block Indian National Congress Committee, for the following reliefs:

- i) Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the respondents to supply the web link for web-casting of election process in the polling stations of assembly constituencies of Kalliassery, Payyannur, Taliparamba, Kannur, Peravoor, Thalassery and Dharmadam, and to supply the external hard disc of the same to the petitioner, upon payment of necessary fee, if any required, within the time limit fixed by this Court.
- ii) Issue a direction to the respondents to instruct the polling officers of assembly constituencies of Kalliassery, Payyannur, Taliparamba, Kannur, Peravoor, Thalassery and Dharmadam to remove mask at polling station to identify the voter properly by the agents and at the time of web casting to avoid impersonation and multiple voting.
- iii) Issue a direction to the respondents to web cast the entire process of election in the polling stations of assembly constituencies of Kalliassery, Payyannur, Taliparamba, Kannur, Peravoor, Thalassery and Dharmadam without fail of the entire process, which are volatile areas.
- iv) Declare that the petitioner is entitled to get the web link of web-casting and external hard disc of the election process in the polling stations of assembly constituencies of Kalliassery, Payyannur, Taliparamba, Kannur, Peravoor, Thalassery and

Dharmadam within the time frame fixed by this Court.

2. Short facts leading to the writ petition are as hereunder:

Petitioner is the President of Madai Block Indian National Congress Committee and is an active social worker and very well interested in the outcome of the ensuing assembly election scheduled to be held on 06.04.2021. By Exhibit P1, the second respondent identified 3137 booths as volatile in northern districts of Kerala namely Kannur, Kasargode, Malappuram and Kozhikode. In those booths, it is decided to web cast the process of polling, for the transparency to avoid bogus voting, multiple voting and impersonation.

According to the petitioner, public can see the web casting only if, the web link is provided by the second respondent. In the previous parliamentary election of the year 2019, due to such web cast, it was seen by the public, a lot of complaints arose, and re-polling was conducted in various booths. The second respondent is not supplying the web link to the petitioner and others. As a matter of right, under the Right to Information Act, 2005, petitioner is entitled to get copy of the hard disc and web link, otherwise, the intention of the Election Commission will be defeated due to web casting. At the time of web casting, in order to identify the voter, a direction has to be issued to remove the mask, otherwise, there would be chances for impersonation under the protest of COVID-19 protocol. Hence, this Court may be pleased to issue a direction to the respondents to release/publish the web link of web casting in Kannur District, in the assembly constituency polling stations of Kalliassery, Payyannur, Thaliparamba, Kannur, Peravoor, Thalassery, and Dharmadam, where the area is highly volatile for factions.

3. On instructions, Mr. Deepu Lal Mohan, learned standing counsel for the Election Commission of India, submitted that the software designed by the Election Commission of India, for the purpose of web casting, is only for viewing by the Election Commission of India - Chief Electoral Officer/District Electoral Officers, and the Returning Officers. Web casting is not meant for viewing by others and consequently, no web link is provided therefore. As regards the removal of mask, learned standing counsel for the respondents submitted that such an idea would be dangerous and violative of COVID-19 protocol and orders issued from time-to-time.

4. Inviting the attention of this court to a decision of the Hon'ble Division Bench of Madras High Court in W.P. No.7698 of 2021 dated 31.3.2021 in **Dravida Munnetara Kazhagam rep. by its Organising Secretary v. the Election Commission of India**, learned standing counsel for the respondents submitted that though there was a prayer therein to provide CCTV live coverage/live web stream during voting in all polling booths and voting centres of Election Commission, after considering the pleadings and the Handbook for Returning Officers published in February, 2019 and the Election Commission's Manual of Electronic Voting Machine and VVPAT, a Hon'ble Division Bench of the

Madras High Court has rejected the said prayer. Learned standing counsel for the respondents submitted that the said decision is squarely applicable to the facts of this case.

5. Mr. P.N. Mohanan, learned counsel for the petitioner, submitted that a direction may be issued to the respondents, to provide hard copy of the web casting.

6. Heard learned counsel for the parties and perused the material available on record.

7. During the course of hearing, when Mr. P.N. Mohanan, learned counsel for the petitioner, was posed with a question as to whether, what is the statutory right of the petitioner to seek for a web link, there is no answer. No statutory provision or order has been placed before us.

8. It is trite law that a mandamus can be issued only if, there is constitutional or statutory right, to be exercised and consequently, failure on the part of the respondents to discharge constitutional/statutory duty, as the case may be. Learned counsel for the petitioner is not in a position to point out any statutory right conferred. In such circumstances, mandamus cannot be issued for mere asking. Reference can be made to few decisions:

- (i) In **State of Kerala v. A. Lakshmi Kutty** reported in (1986) 4 SCC 632, the Hon'ble Supreme Court held that, a Writ

of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

(ii) In **Comptroller and Auditor General of India v. K.S.Jegannathan**, reported in AIR 1987 SC 537 - (1986) 2 SCC 679, a Three-Judge Bench of the Hon'ble Apex Court referred to Halsbury's Laws of England 4th Edition, Vol. I, Paragraph 89, about the efficacy of mandamus:

"89. Nature of Mandamus.-- is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy, for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

(iii) In **Raisa Begum v. State of U.P.**, reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three

qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iv) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In **State of U.P. and Ors. v. Harish Chandra and Ors.**, reported in (1996) 9 SCC 309, at paragraph 10, the Hon'ble Apex Court held as follows:

“10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....”

(b) In **Union of India v. S.B. Vohra** reported in (2004) 2 SCC 150, the Hon'ble Apex Court considered the said issue and held that,- 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.”

(c) In **Oriental Bank of Commerce v. Sunder Lal Jain** reported in (2008) 2 SCC 280, at paragraphs 11 and 12, the Hon'ble Apex Court held as follows:-

“11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of

Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

“Note 187.- Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.- Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.- Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and

should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.--.....The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action."

12. These very principles have been adopted in our country. In **Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh and others**, (AIR 1977 SC 2149), after referring to the earlier decisions in *Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer*, (AIR 1966 SC 334); *Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College*, (AIR 1962 SC 1210) and *Dr. Umakant Saran v. State of Bihar*, (AIR 1973 SC 964), this Court observed as follows in paragraph 15 of the reports :

"15. There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a

statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

(v) When a Writ of Mandamus can be issued, has been summarised in *Corpus Juris Secundum*, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to

entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective."

(emphasis supplied)

9. That apart, it is the categorical submission of the learned standing counsel for the respondents that the software designed is only for viewing by the statutory authorities as aforesaid. Right of the official respondents to prepare a software exclusively for themselves, for viewing, cannot be extended to the petitioner or any other person, as a matter of right.

10. As regards the second prayer, for a direction to the respondents to instruct the polling officers of assembly constituencies of Kalliassery, Payyannur, Taliparamba, Kannur, Peravoor, Thalassery, and Dharmadam, to remove mask at the polling stations to identify the voter properly by the agents and at the time of web casting, to avoid impersonation and multiple voting, the said prayer is contrary to COVID-19 protocol, which states that voters have to maintain social distancing and wear mask.

11. As regards the submission of the learned counsel for the petitioner that a direction be issued to the respondents, to provide hard copy of the web casting, no rule has been pointed out.

12. No directions can be issued to the respondents to furnish hard copy of the web casting. If any application under the provisions of the Right to Information Act, 2005 is made, it is for the Public Information Officer concerned, to consider as to whether, such information can be provided or not, under the statutory provisions.

13. Thus, giving due consideration to the pleadings and submissions, we are of the view that the petitioner has not made out a case for issuance of any directions, as prayed for.

Writ petition is dismissed.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

**S. Manikumar
Chief Justice**

Sd/-

**Shaji P. Chaly
Judge**

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APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | A TRUE COPY OF THE PRESS RELEASE PUBLISHED BY INDIAN EXPRESS DAILY DATED 06.03.2021 OF THE ELECTION COMMISSION. |
| EXHIBIT P2 | A TRUE COPY OF THE POLLING BOTH IDENTIFIED IN THE KANNUR DISTRICT |
| EXHIBIT P3 | A TRUE COPY OF THE REQUEST DATED 30.3.2021 SENT BY THE PETITIONER TO THE OFFICIAL EMAIL IDS OF THE SECOND RESPONDENT. |
| EXHIBIT P4 | A TRUE COPY OF THE REQUEST DATED 30.3.2021 SENT BY THE PETITIONER TO THE OFFICIAL EMAIL IDS OF THE THIRD RESPONDENT. |

/TRUE COPY/

P.A. TO JUDGE