

HIGH COURT OF KARNATAKA**Bench: Justices R. Devdas and J.M. Khazi****Date of Decision: 16th May 2024**

WRIT PETITION NO. 12711 OF 2024 (GM-RES)

MR. SAYED KHALIL ULLA HUSSAINI ...PETITIONER**VERSUS****THE CHIEF ELECTION COMMISSION OF INDIA & ORS.
...RESPONDENTS****Legislation:**

Articles 226 and 227 of the Constitution of India, 1950

Section 123(5) of the Representation of People Act, 1951

14(1) of the High Court of Karnataka (Public Interest Litigation) Rules, 2018

Subject: Public interest litigation seeking issuance of a writ of mandamus to direct the Chief Electoral Officer and Regional Commissioner to consider representations for implementing free bus services for voters on polling day and enhancing the number of polling booths for the Member of Legislative Council election in the North East Graduate Constituency, 2024.

Headnotes:

Constitutional Law – Writ of Mandamus – Petition under Articles 226 and 227 of the Constitution of India seeking a Writ of Mandamus to direct the Chief Electoral Officer and the Regional Commissioner to consider the petitioner's representation for implementing free bus services for voters and increasing the number of polling booths – Respondents opposed the petition stating such directions would contravene Section 123(5) of the Representation of People Act, 1951 and highlighted that the number of polling booths had already been increased from 160 to 195 – Court held that respondents had duly addressed the petitioner's grievances [Paras 2-6].

Election Law – Free Transport for Voters – Supreme Court of India reviewed the petitioner's plea for free bus services on polling day – Found that provision of such services by the State or Public Transport Corporations would violate the express provisions of the Representation of People Act, 1951 – Court noted that directions for free bus services could not be issued as it would be deemed a corrupt practice under the Act [Paras 3-4].

Enhancement of Polling Booths – Petition also sought an increase in the number of polling booths for elections – Court noted that respondents had already increased the number of polling booths from 160 to 195 based on voter numbers and Deputy Commissioner’s inputs – Court satisfied that this addressed the petitioner's concerns [Para 5-7].

Decision – Dismissal of Writ Petition – Held – The writ petition was dismissed as the respondents had adequately addressed the issues raised by the petitioner through objections and an endorsement, meeting the requirements of the election process as per legal provisions [Para 8].

Referred Cases:

No specific referred cases mentioned in the provided judgment.

Representing Advocates:

Sri. Mohd Akiam Uppin for the petitioner,

Sri. Sharath Dodawad for respondents 1 and 2,

Smt. B.P. Radha, AGA for respondent 3.

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ORDER R.DEVDAS J., (ORAL):

Learned counsel, Sri.Sharat Dodawad has entered appearance on behalf of respondent No.1 and 2 and Chief Election Commissioner has filed statement of objections by serving copy of the same on the learned counsel for the petitioner.

2. The petitioner is before this Court seeking a Writ of Mandamus, directing the respondents Chief Electoral Officer, Bengaluru and The Regional Commissioner, Kalaburagi to consider his representation dated 12.03.2024, Annexure-A, and 13.03.2024 at Annexure-B. The petitioner is seeking to espouse public cause, in as much as seeking implementation of free bus services to transport the voters on the polling date so that the voters could be facilitated to travel by such free buses and cast their votes, which according

to the petitioner would be in the interest of democracy. The petitioner is also seeking to enhance the number of polling booths, which has been fixed at 160 for the Election to the post of Member of Legislative Council in the North East Graduate Constituency, 2024.

3. Learned counsel for the respondents Election Commissioner points out from the statement of objections that in so far as first prayer made by the petitioner for permitting free buses to ply on the date of polling, firstly, such powers cannot be exercised by the Election Commissioner. Secondly, it is pointed out from express provision contained sub-section (5) of Section 123 of The Representation of People Act 1951, and more particularly, the second proviso of sub-section (5) and submits that neither the candidates nor the State Governments or the Public Transport Corporations can make such provision, since it would go contrary to the express provision. In the second proviso it is stated that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

4. Learned counsel therefore submits that if such directions are issued either by the State Government or the Head of Department of the Public Transport Corporation, it would violate the express provisions contained in the statute. Allegation can be made against political party, which is running the Government that such directions are given misusing its authority and in violation of the Code of Conduct. Moreover, the Chief Election Commissioner is not empowered to issue such directions either to the State Government or to the Head of the Public Transport Corporation.

5. In so far as the second prayer made by the petitioner regarding enhancement of polling booths, learned counsel for the respondents has drawn the attention of this Court to Annexure-R3, which is filed along with the

statement of objections. Learned counsel submits that the polling stations which were earlier fixed at 160 is enhanced to 195 having regard to the number of voters and the information obtained from the respective Deputy Commissioner. Learned counsel, therefore, submits that the prayers made in the writ petition cannot be granted.

6. Having heard the learned counsel for the petitioner and learned counsel for the respondent and on perusal of the petition papers, this Court is of the considered opinion that the two prayers made by the petitioner having regard to representation given by him have been answered by the respondents in the statement of objections. Infact, an endorsement dated 19.03.2024 has been issued by the Regional Commissioner, Kalaburagi, Sub-Division to the petitioner bringing to his notice the prayer made by the petitioner and the arrangements made by the Chief Election Commissioner for the purposes of the impending elections. It has also been stated that no such arrangement for plying free buses can be made either by the Chief Election Commissioner or any other Authority, since it would be in violation of the express provision contained in the Act, 1951. Information regarding the enhancement of the polling stations are also given to the petitioner.

7. In that view of the matter, we are satisfied that the respondent Chief Election Commissioner, through the Regional Commissioner has considered the grievance of the petitioner and has issued an Endorsement to the petitioner bringing to his notice the enhancement of polling booths made from 160 to 195, which would meet the requirements having regard to the number of voters in the constituency.

8. Consequently, writ petition stands disposed of.

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