

W.P.No.10441 of 2021

THE HON'BLE CHIEF JUSTICE
and
SENTHILKUMAR RAMAMOORTHY, J.

(made by the Hon'ble Chief Justice)

Mr.V.Jayaprakash Narayanan, State Government Pleader, takes notice for the first respondent. Mr.Niranjan Rajagopalan takes notice for the Election Commission.

2. The petition pertains to the counting of votes at a solitary assembly constituency, but the larger picture cannot be missed.

3. The petitioner apprehends that at assembly constituency No.135 in Karur, special measures have to be taken at the time of counting to maintain Covid protocol since 77 candidates are in the fray and even though an additional hall has been arranged by the Election Commission for the purpose of counting, that may not suffice to accommodate the counting personnel and the agents of 77 candidates.

4. In the suo motu proceedings pertaining to the Covid situation initiated by this Court on April 22, 2021, among the directions issued to the State, some were for appropriate measures to be put in place in consultation with the Election Commission for counting day on May 2, 2021. Even though the polling was by and large peaceful in this State on April 6, 2021, it must be observed that the Election Commission could not ensure that political parties adhered to the Covid protocol at the time of election campaigns and rallies. Despite repeated orders of this Court, going on like a broken record at the foot of almost every order on an election petition, that Covid protocol ought to be maintained during the campaign time, the significance of adhering to such protocol may have been lost on the Election Commission, going by the silence on the part of the Election Commission as campaigning and rallies were conducted without distancing norms being maintained and in wanton disregard of the other requirements of the protocol.

5. In view of the rapid surge in the number of cases on a daily basis, albeit this State not yet being as badly affected as some other

States, the measures to be adopted at the time of the counting of votes on May 2, 2021, which is about a week away, should already have been planned in the light of the grim situation now prevailing. At no cost should the counting result in being a catalyst for a further surge, politics or no politics, and whether the counting takes place in a staggered manner or is deferred. Public health is of paramount importance and it is distressing that Constitutional authorities have to be reminded in such regard. It is only when the citizen survives that he enjoys the other rights that this democratic republic guarantees unto him. The situation is now one of survival and protection and, everything else comes thereafter.

6. As far as the Karur constituency is concerned, it is submitted on behalf of the Election Commission that two halls, one measuring about 3500 sq.ft and the other measuring in excess of 4000 sq.ft, have been arranged. Upon the Court's query whether such spaces would be adequate if most of the 77 candidates were to engage agents at the time of counting, the Election Commission claims that all but two of the independent candidates have indicated that they would not engage any agents at the time of counting and only seven

out of nine major political parties have confirmed in writing that they would be appointing agents.

7. In such a scenario, the Election Commission does not expect that Covid protocol and appropriate measures cannot be taken if counting is conducted at the two designated halls. The Election Commission says that six additional counting tables have been organized so that distancing norms can be maintained.

8. Similar appropriate measures have to be adopted at every counting centre and it is only upon maintaining regular sanitization, proper hygienic conditions, mandatory wearing of mask and adherence to the distance norms, should any counting begin or be continued. The State Health Secretary and the Director of Public Health should be consulted by the Election Commission and the Chief Electoral Officer responsible in the State, to put appropriate measures in place immediately.

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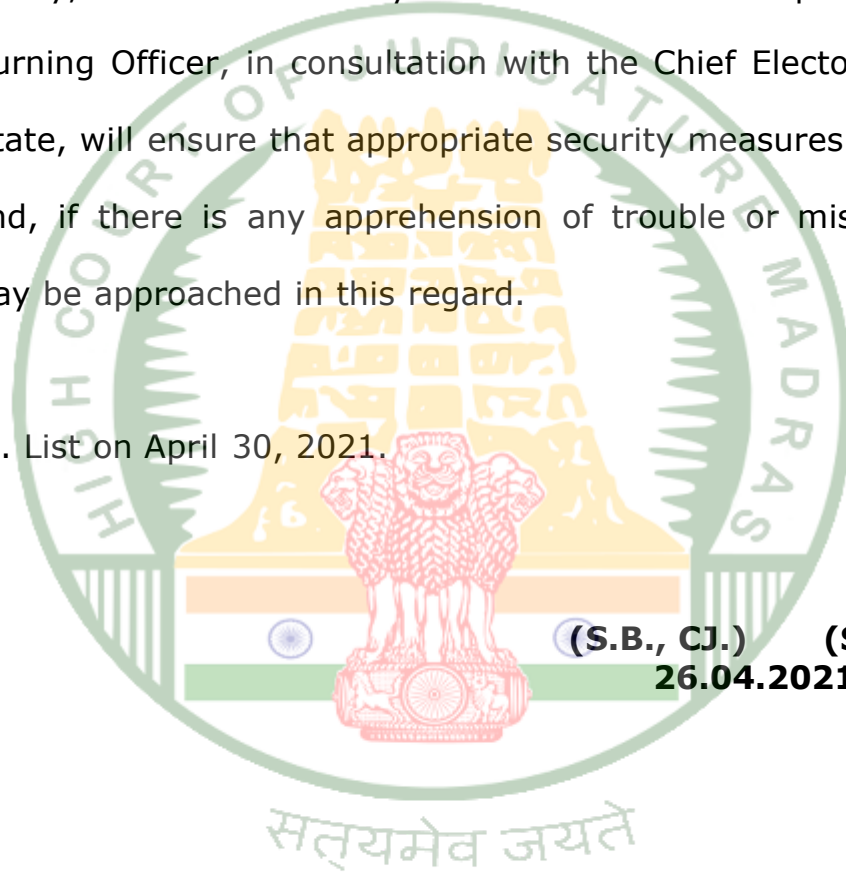
9. The matter will appear on April 30, 2021 to review the situation when a complete picture as to adequate steps having been

taken at all counting centres should be indicated by the Election Commission.

10. The petitioner says that since Karur is a sensitive constituency, additional security measures should be put in place. The Returning Officer, in consultation with the Chief Electoral Officer in the State, will ensure that appropriate security measures are put in place and, if there is any apprehension of trouble or mischief, the State may be approached in this regard.

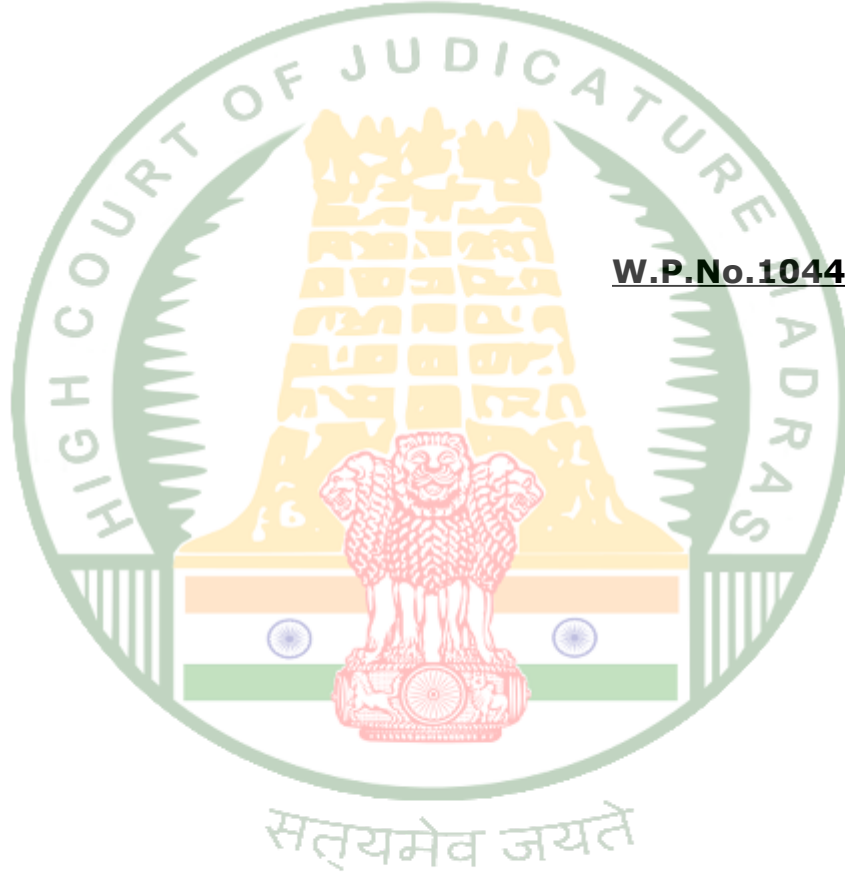
11. List on April 30, 2021.

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