

Karnataka High Court
Sri Ravi M vs The Union Of India on 2 May, 2023
Bench: Krishna S Ksdj, Vapj

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WP No. 9720 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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ND

DATED THIS THE 2 DAY OF MAY, 2023

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 9720 OF 2023 (GM-RES)

BETWEEN:

SRI. RAVI M,
S/O MAHADEVA,
AGED ABOUT 39 YEARS,
R/A NO.138, IST FLOOR,
RAJARAJESHWARINAGAR,
BEML LAYOUT, MYSURU-570 022.

AND ALSO :

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by SHARADA
VANI B
Location:
HIGH COURT
OF
KARNATAKA

SRI. RAVI M,
S/O MAHADEVA,
AGED ABOUT 39 YEARS,
FOUNDER AND JOINT SECRETARY,
OF SAGAROTTARA KANNADIGARU ASSOCIATION,
R/A FLAT NO.3, BEECH HOUSE, 17,
ELM ROAD, REDHILL,
ENGLAND RH16AJ.
MOB NO.8867642218
PAN NO.AUBPR4935L
AADHAR CARD NO.5017 5158 1426
E-MAIL-RAVISAI.MAHADEVA@GMAIL.COM.

...PETITIONER

(BY SRI. RUDRAPPA P.,ADVOCATE)

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AND:

1. THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF EXTERNAL AFFAIRS,
SOUTH BLOCK, SECRETARIAT BUILDING,
NEW DELHI-110 001.
2. THE ELECTION COMMISSION OF INDIA,
REPRESENTED BY ITS COMMISSIONER,
NIRVACHAN SADAN, ASHOKA ROAD,
NEW DELHI-110 001.
3. THE STATE OF KARNATAKA,
REPRESENTED BY ITS CHIEF SECRETARY,
VIDHANA SOUDHA,
BENGALURU-560 001.
4. THE CHIEF ELECTORAL OFFICER,
KARNATAKA STATE,
SHESHADRI ROAD,
BENGALURU-560 001.

...RESPONDENTS

(BY SRI.SUBRAMANYA R., AAG A/W
SMT. M C NAGASHREE., AGA FOR R1 & R3;
SRI. S R DODAWAD., STANDING COUNSEL FOR R2 & R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A)
ISSUE A WRIT OF MANDAMUS OR ANY OTHER WRIT OR ORDER
OR DIRECTIONS AGAINST THE RESPONDENTS TO PROVIDE
THE VOTING FACILITY TO NRIs IN THEIR RESPECTIVE
RESIDING COUNTRIES IN THE ELECTIONS AND B)GRANT SUCH
OTHER RELIEFS.

THIS PETITION COMING ON FOR ORDERS THIS DAY,
KRISHNA S. DIXIT., J., MADE THE FOLLOWING:

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ORDER

Petitioner, a Non-Resident Indian presently residing in the Kingdom of Saudi Arabia has presented this social action litigation with a prayer scripted as under:

"Issue a Writ of Mandamus or any other Writ or order or directions against the Respondents to provide the voting facility to NRIs in their respective residing countries in the Elections."(sic)

2. Learned counsel appearing for the Petitioner argues that India being a democratic polity, periodic elections do take place and therefore, a large chunk of citizens residing in several foreign countries, as NRIs cannot be excluded from the democratic process; right to vote in the elections to the Parliament and State Legislatures should be made available to the NRIs. He hastens to add that with the advanced Science & Technology, such a facility can be provided disregarding whatever arguable difficulties the Election Commission of India may have.

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3. Sri M N Kumar, on request to accepts notice for the 1st Respondent - Union of India; Sri S.R. Dodawad, learned counsel appears for 2nd Respondent - Election Commission of India & the 4th Respondent - Chief Electoral Officer. Learned AAG Sri Subramanya R appears for the 3rd Respondent - State of Karnataka. It is submitted on behalf of the Respondents that: the right to vote is a creature of law; in the absence of such a right is shown to have been created by law, prayer of the kind cannot be granted; to whom right to vote should be accorded is a matter of statutory policy and therefore, Writ Courts cannot intervene in the matter. They also highlight the possible difficulties of such a right being granted to the NRIs, whilst on foreign soil.

4. Having heard the learned counsel for the parties and having perused the Petition papers, this Court declines indulgence in the matter for the following reasons:

a) Harald Lasky highlighted the method of periodical poll as the foundation for "Government by consent". In WP No. 9720 of 2023 his famous work entitled "Grammar of Politics", he writes "... it has been the judgment of most modern communities that the term of power enjoyed by any Government must be subject to periodical renewal. There is, that is to say, no permanent right to power. Every Government must submit itself to the judgment of those who feel the consequence of its acts and again ... It involves, firstly a measureless importance in the method of submission. The way in which popular judgment is elicited must be such as to secure a valid expression of public opinion. It involves in the second place, the certainty that in the period of office, a normal Government will seek so to act that it keeps, so far as it can, the balance of the popular judgment in its favour." The emphasis is on the fact that "the rulers" should be accepted by the "ruled", and this acceptance being no mere acquiescence but a "conscious choice". Poll is the most important and vital stage in the electoral process. It is through the poll that the voters who are the ultimate rulers in a democracy bestow their WP No. 9720 of 2023 mandate to the candidates of their choice in the electoral fray.

b) Elections are described as festivals of democracy and the polling day marks the most eventful occasion in their celebration that decide the fate of political parties and the candidates. The Apex Court in MOHINDER SINGH GILL Vs. CHIEF ELECTION COMMISSIONER, AIR 1978 SC 851

quotes what Sir Winston Churchill had said " at the bottom of all tributes paid to democracy is the little man, walking into a little booth with a little pencil, making a little cross on a little bit of paper..." And that is poll. The Constitution of India seeks to achieve and has over the years achieved in an appreciable measure the democratic set up and the rule of law by electoral legislation. To be effective, efficient & enlightened, everyone has to contribute to this pivotal process of poll. In India, the law relating to elections inter alia is comprised in the provisions of the Constitution, the Representation of the People Act, 1950, the Representation of the People Act, WP No. 9720 of 2023 1951 and a set of Rules promulgated under these legislations. Umpteen number of Guidelines have been issued by the Election Commission of India in the form of "Orders" to effectuate a free, fair & transparent elections to the Parliament and State Legislatures, periodically. Added, there is a plethora of decisions of the Apex Court & High Courts. All this has developed into "electoral jurisprudence".

c) It has now been firmly established vide SHAILESH MANUBHAI PARMAR v ELECTION COMMISSION OF INDIA, (2018) 9 SCC 100 that in our system, the right to vote is neither a fundamental right nor a constitutional right nor a common law right; it is a statutory right pure & simple. This right, as any other, is also not absolute; it is subject to conditions & restrictions prescribed by law. No doubt, the right to vote is very vital to the democracy, and without that, democracy will fail to thrive; therefore, massive significance is attached to this right in the democratic jurisdictions world over. The Electoral Right in WP No. 9720 of 2023 our law is defined in Section 79(b) of the 1951 Act to mean the right of a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate, or to vote or refrain from voting at an election. The basic question, however, is who is entitled or has a right to vote at an election and is thus a voter. The law provides that only such an adult Indian citizen has a right to vote at an election in a parliamentary or assembly constituency, whose name is for the time being entered in the electoral rolls of the constituency (s 62(1), 1951 Act). The electoral roll means the current electoral roll, which is in force on the last date for making nominations in the constituency.

d) Learned Panel Counsel appearing for the Commission is more than justified in contending that unless the statute gives the right to vote, such a right cannot be claimed by anyone vide Section 62 of 1951 Act. This view gains support from the text of Section 19 of the 1950 Act which prescribes the conditions for registering a person as an elector, and one of them is that such a WP No. 9720 of 2023 person "is ordinary resident in a constituency". It is pertinent to mention that the meaning of the term "ordinarily resident" is given in Section 20 of the 1950 Act, which does not exclude the NRIs. It is so apparent from the text of the said provision. In other words, NRIs also can be registered as voters in the electoral rolls. In legal parlance, they are called 'Overseas Electors'.

e) Section 20A introduced by Parliamentary amendment to the 1950 Act vide Act 36 of 2010 w.e.f. 10.02.2011 treats the NRIs as a separate class of voters. This new provision reads as under:

"20A Special provisions for citizens of India residing outside India. --

(1) Notwithstanding anything contained in this Act, every citizen of India,--

- (a) whose name is not included in the electoral roll;
- (b) who has not acquired the citizenship of any other country; and
- (c) who is absenting from his place of ordinary residence in India owing to his employment, education or otherwise outside India (whether temporarily or not), shall be entitled to have his name registered in the electoral roll in the

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WP No. 9720 of 2023 constituency in which his place of residence in India as mentioned in his passport is located.

(2) The time within which the name of persons referred to in sub-section (1) shall be registered in the electoral roll and the manner and procedure for registering of a person in the electoral roll under sub-section (1) shall be such as may be prescribed.

(3) Every person registered under this section shall, if otherwise eligible to exercise his franchise, be allowed to vote at an election in the constituency."

f) The Central Government has introduced Rule 8B to the Registration of Electors Rules, 1960 for the purpose of effectuating the amended provisions of Section 20A. The said Rule reads as under:

"Inclusion of names of overseas electors in the rolls. -- (1) Every overseas elector, who is not otherwise disqualified for registration and is desirous of being registered in the roll for the constituency pertaining to the locality in which his place of residence in India as mentioned in his passport is located, may make an application in Form 6A to the concerned registration officer directly or send the application to him by post.

(2) The provisions of sub-rules (2), (3) and (4) of rule 13 shall mutatis mutandis apply for filing

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WP No. 9720 of 2023 of claims or objections to the inclusion of name or to any particulars of an entry or for transposition of any entry from one place to another in the roll as an overseas elector.

(3) Every application in Form 6A sent by post shall be accompanied by copies of all the documents mentioned in the said Form 4[duly self attested].

(4) Every application in Form 6A presented in person to the registration officer shall be accompanied by photocopies of all the documents mentioned in the said Form along with originals thereof for verification by the registration officer.

(5) Where a personal hearing is necessary in respect of any claim for inclusion or objection to the inclusion of name in the roll as an overseas elector, the registration officer may, if considered necessary, designate an official in the Indian Mission in the concerned country for the purpose."

g) A conjoint reading of the provisions of Section 20 & 20A of the 1950 Act read with Rule 8B of the 1960 Rules and Form 6A, puts the matter succinctly thus: Form 6A is prescribed in which the application needs to be made by an NRI for inclusion of his name in the Electoral Roll as an overseas elector. This Form can be downloaded from the website of Chief Electoral Officer of the concerned State or

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WP No. 9720 of 2023 of Election Commission of India. This Form is also available free of cost in Indian Missions in foreign countries. The Form which prescribes the requisites can be sent by post to the Electoral Registration Officer/Assistant Electoral Registration Officer of the concerned constituency; it can also be filed online on the website of Chief Electoral Officer of the Election Commission of India. Thus, personal appearance of applicant ordinarily is not necessary. If the application is complete in all respects, and after public display, there is no objection within seven days, name of the applicant shall be entered in the electoral roll. After enrollment, an NRI will be able to cast his vote in an election in the constituency of course, in person, on the production of his original Passport.

h) In the light of above discussion, an "overseas elector" can be described as a person who being a citizen of India has not acquired citizenship of any other country and who is absenting from his place of ordinary residence

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WP No. 9720 of 2023 in India owing to employment, education or otherwise and being eligible to be, is registered as a voter in the constituency in which his place of residence in India as mentioned in his Passport, is located. The submission of learned counsel for the Petitioner that the Writ Court should direct the Election Commission to make appropriate provision to enable the NRIs to vote in the elections even whilst residing on a foreign soil, is too farfetched an argument. The scheme inter alia emerging from the two legislations i.e., 1950 Act & 1951 Act read with Rule 8B of 1960 Rules & Form 6A does not permit an overseas elector to cast vote mediately whilst on foreign soil. His personal presence in the booth is a sine qua non for casting vote. Whether he should be enabled to cast his vote in absentia is, essentially a matter of legislative policy that does not fall into the domain of Judiciary. A host of factors enter the fray of such a policy making and they are largely unintelligible to judges. Therefore, Courts cannot direct formulation of such policies as a binding rule of conduct, in due deference to doctrine of separation of

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WP No. 9720 of 2023 powers which is recognized as a basic feature of the Constitution vide **INDIRA NEHRU GANDHI vs. SHRI. RAJ NARAIN AND ANOTHER**, 1976 (2) SCR 347. Added, we are not told as to such a provision being there in any other jurisdictions.

In the above circumstances, this Writ Petition being devoid of merits is liable to be dismissed and accordingly it is, costs having been made easy.

Sd/-

JUDGE Sd/-

JUDGE Bsv