

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7720 of 2021

M.Ahamed Shahjahan @ M.A.Shahjahan ... petitioner

Vs

- 1 Chief Electoral Officer
(CEO) and Principal Secretary to Government
State of Tamil Nadu Public (Elections)
Department Secretariat
Fort.St.George, Chennai- 9
- 2 The Commissioner
Labour Commissionerate
DMS Complex
Teynampet, Chennai- 18 ... respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to strictly implement Section 135B of the representation of the People Act, 1951, in respect of labourers working in the unorganized sector in the election that is going to be held on 6.4.2021 for Tamil Nadu Legislative State Assembly and bye-Election to Kanniyyakumari Constituency.

For Petitioner : Mr.V.R.Thangavel
for Mr.R.Ramanlaal

For Respondents : Mr.Niranjan Rajagopalan,
for 1st respondent

ORDER

(made by the Hon'ble Chief Justice)

The public interest litigation is for ensuring that persons engaged primarily in the unorganized sector and in private employment are afforded a chance to participate in the exercise of voting at the ensuing State elections.

2. The petitioner points out that even though Section 135B of the Representation of the People Act, 1951, mandates that election day would be a paid holiday for employees engaged in any business, trade, industrial undertaking or any other establishment and who are entitled to vote, as a matter of fact, employers do not allow the concerned employees to take a day off and there is little done in the enforcement of the provision. The Election Commission says that the fine is so insignificant that the provision does not work effectively as a deterrent.

3. There is also the exception carved out in sub-Section (4) which gives a handle to employers to use the same as an excuse.

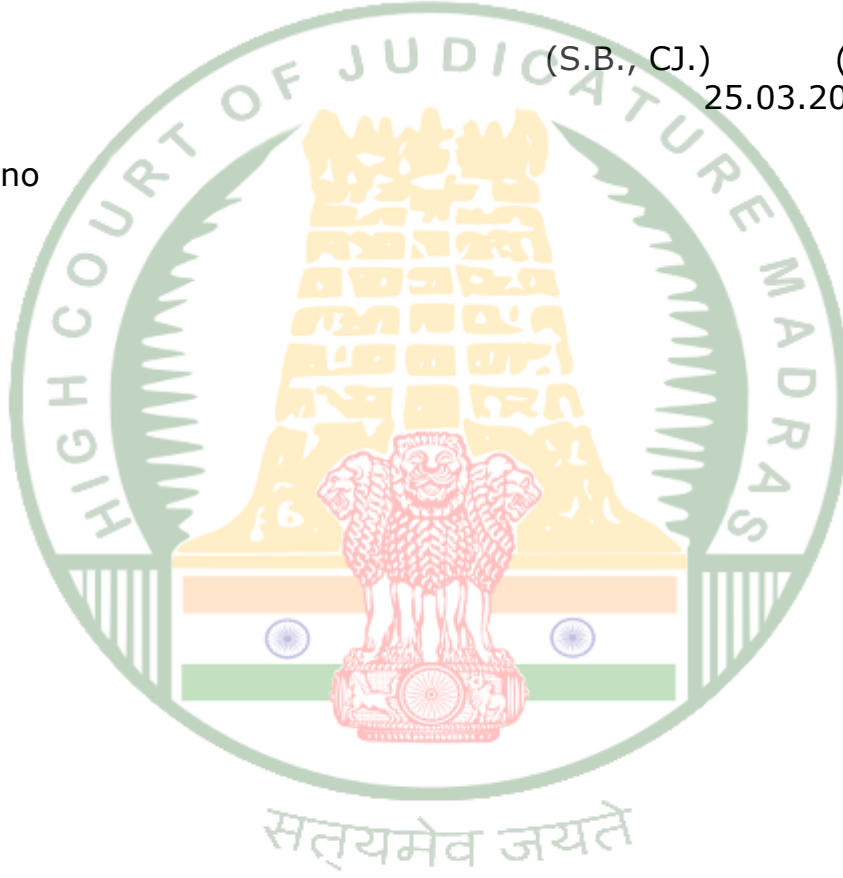
4. Both the State Government and the Election Commission should publish appropriate notifications to make the employees aware of their rights so that the employees may assert themselves and take appropriate steps to exercise their franchise. The Election Commission may also indicate that subsequent complaints may be entertained and if found credible, the complaints may result in criminal proceedings being instituted.

5. Under the Constitutional scheme, every citizen has equal rights. However, not all citizens have the opportunities to exercise such rights in equal measure. At least on the date of election, the fraternal spirit that the Constitution espouses should prompt every citizen to make it possible for every other citizen to also participate in the celebration of democracy. Whether or not any transgression results in penal action, the Court appeals to all employers to make it possible for their employees to cast their vote on election day, even if it entails a degree of inconvenience to the employers.

6. W.P.No.7720 of 2021 is disposed of. Consequently, W.M.P.No.8271 of 2021 is also closed. There will be no order as to costs.

(S.B., CJ.) (S.K.R., J.)
25.03.2021

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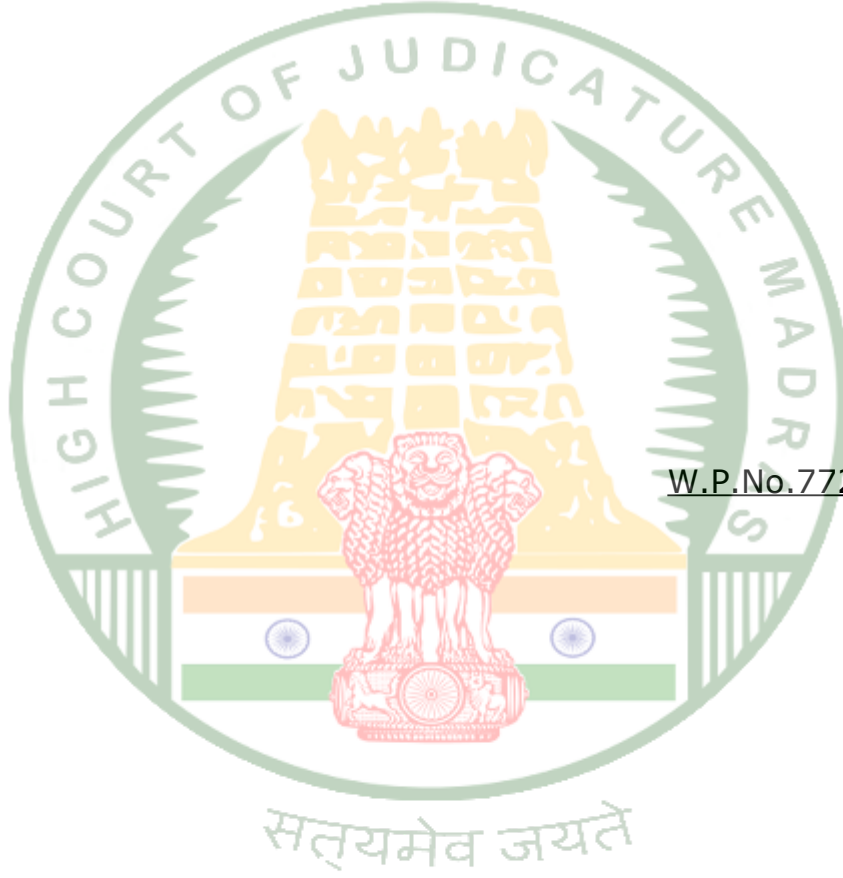


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W.P.No.7720 of 2021

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

(tar)



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