

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WA.No. 655 of 2010 () IN WP(C).4237/2008

AGAINST THE JUDGMENT IN WP(C) 4237/2008 of HIGH COURT OF KERALA
DATED 01-03-2010

APPELLANT(S)/PETITIONER:

CHIRAYINKEEZHU.A.BABU, ADVOCATE
S/O. K.ACHUTHAN, 'SINDOORAM' OPP:RAILWAY STATION
CHIRAYINKIL.P.O., SARKARA VILLAGE, TRIVANDRUM DISTRICT
KERALA.

BY ADVS.SRI.K.V.SOHAN
SRI.M.R.RAJESH

RESPONDENT(S):

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1. THE DELIMITATION COMMISSION,
REPRESENTED BY ITS SECRETARY
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001.
 - * 2. MR. JUSTICE KULDIP SINGH(RETD),
CHAIRMAN, DELIMITATION COMMISSION
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001.
 - * 3. MR. B.B.TANDON, MEMBER,
THE DELIMITATION COMMISSION
NIRVACHAN SADAN ASHOKA ROAD, NEW DELHI-110001.
 - * 4. MR. N.MOHAN DAS, MEMBER,
THE DELIMITATION COMMISSION, RESIDING AT, 'SREESYLAM'
VALYA PARAMBU ROAD, ELAMAKKARA.P.O., ERNAKULAM-682026.
 - * 5. MR. SHANGARA RAM, SECRETARY,
THE DELIMITATION COMMISSION
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001.
 6. THE ELECTION COMMISSION OF INDIA,
REP. BY ITS SECRETARY, NIRVACHAN SADAN, ASHOKA ROAD
NEW DELHI-110001.
 7. THE KERALA STATE ELECTION COMMISSIONER
OFFICE OF THE KERALA STATE ELECTION COMMISSION
THIRUVANANTHAPURAM.

8. THE CHIEF ELECTORAL OFFICER, KERALA,
OFFICE OF THE CHIEF ELECTROL OFFICER
THIRUVANANTHPURAM.
9. THE UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF LAW, JUSTICE & COMPANY
AFFAIRS, NEW DELHI-110001.
10. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

ADDL. 11. ANIL KUMAR.S. S/O. U.SUKUMARAN,
RESIDING AT VIJAYABHAVAN, T.C.3/1347, LEKSHMI NAGAR
PATTOM.P.O., THIRUVANANTHAPURAM.

(R2 TO R5 ARE STRUCK OFF FROM THE PARTY ARRAY AS PER ORDER
DATED 7.4.2010)

R1, R6-8 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,ELE.COMMN.
R 9 BY ADV. SRI.N.NAGARESH,ASST.S.G OF INDI
R10 BY SR.GOV'T PLEADER SRI.THOMAS JOHN AMBUKAN
R BY SRI.RAM MOHAN.G.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

W.A.No.655 of 2010

Dated this the 21st day of January, 2015

JUDGMENT

Antony Dominic, J.

- 1.This writ appeal is filed by the unsuccessful petitioner in W.P(C).4237/08, challenging the judgment dated 1.3.2010 dismissing the writ petition as not maintainable.
- 2.We heard learned counsel for the appellant, learned counsel appearing for respondents 1, 6, 7 and 8, learned Assistant Solicitor General for the 9th respondent and the learned Government Pleader appearing for the 10th respondent.
- 3.The writ petition was filed with a prayer to quash Ext.P4 order passed by the Delimitation Commission and to declare Ext.P4 as null and void. Subsequently, the writ petition was amended incorporating a prayer for declaring Ext.P5 order issued by the Commission as unconstitutional and illegal. Learned single Judge, by judgment dated 1.3.2010, held that in view of Ext.P5, Ext.P4 does not survive and that Ext.P5 was one issued under

section 8(1)(a) of the Representation of the People Act, 1950 and therefore, in view of the bar under Article 329 (a) of the Constitution of India, it is immune from challenge and therefore, the writ petition was held not maintainable. It is this judgment which is under challenge before us.

4. Briefly stated, the case is that Ext.P2 is a proposal issued under section 9(2)(a) of the Delimitation Act, 2002. In so far as this appeal is concerned, the challenge raised was in the context of Sl.Nos.128 and 129, Attingal (SC) and Chirayinkeezhu (SC) and the objection of the petitioner to the proposal was that these constituencies are lying adjacent to each other and therefore, both cannot be clustered as SC constituencies. Subsequently, the Commission issued Ext.P3, a notification, in which Attingal was retained as an SC constituency as proposed, whereas Chirayinkeezhu was converted as a general constituency and Vattiyoorkavu was reserved as an SC constituency. Later, Delimitation Commission issued Ext.P4 as a corrigendum to Ext.P3, where Vattiyoorkavu was restored as a general constituency whereas Chirayinkeezhu was shown as reserved for

Scheduled Castes. It was in this context that challenging Ext.P4, the appellant filed the writ petition on 4.2.2008. During the pendency of the writ petition, on 26.11.2008, Election Commission issued Ext.P5 consolidated order under section 8(1) (a) of the Representation of the People Act, 1950. Thereupon, producing the notification dated 26.11.2008 as Ext.P5, a prayer for quashing Ext.P5 was also incorporated.

5.The only question that arises for consideration is whether Ext.P5 is an order issued under Section 8(1) (a) of the Representation of the People Act, 1950.

6.Section 8(1)(a) of the RP Act reads thus:

"8. Consolidation of delimitation orders - (1)

Having regard to all the orders referred to in sub-section (5) of section 4 and sub-section (3) of section 7 relating to the delimitation of parliamentary and assembly constituencies in all States and Union Territories, except the States of Arunachal Pradesh, Assam, Jharkhand, Manipur and Nagaland, made by the Delimitation Commission and published in the Official Gazette, the Election Commission shall-

(a) after making such amendments as appear to it to be necessary for bringing up-to-date the description of the extent of the parliamentary and assembly constituencies as given in such orders, without, however, altering the extent of any such constituency;

(b) xxx xxx xxx

consolidate all such orders into one single order to be known as the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 and shall send authentic copies of that Order to the Central Government and to the Government of each State having a Legislative Assembly; and thereupon that Order shall supersede all the orders referred to in sub-section (5) of section 4 and sub-section (3) of section 7 and shall have the force of law and shall not be called in question in any court."

7. Reading of the above provision shows that having regard to all orders referred to in section 4(5) and section 7(3), after making such amendments as appear to the Delimitation Commission to be necessary for bringing up-to-date the description of the extent of the parliamentary and assembly constituencies as given in such orders, the Commission is to consolidate all such orders into one single order to be known as the Delimitation of Parliamentary and

Assembly Constituencies Order, 2008. Thereupon, it shall send authentic copies of the order to the Central Government and to the Government of each State and the said order shall supersede all orders referred to in section 4(5) and section 7(3) and shall have the force of law and shall not be called in question in any court.

8.This, therefore, makes it abundantly clear that on the issuance of Ext.P5, Ext.P4 has ceased to be of any relevance and Ext.P5 has the force of law and is immune from any challenge in any court, in view of the provisions contained in Article 329 (a) of the Constitution of India. This precisely is the conclusion arrived at by the learned single Judge and in our view, this conclusion does not suffer from any illegality justifying a different view in the matter. We, therefore, do not find any merit in this appeal.

Appeal fails. It is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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