

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.41848 of 2015

ORDER:

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This Writ Petition, under Article 226 of the Constitution of India, is filed seeking the following relief/s:-

“....to issue a writ, order or direction, more particularly, one in the nature of Writ of mandamus declaring the action of the respondent authorities in not correctly declaring the population of 48 - Shalibanda ward of Greater Hyderabad Municipal Corporation and also not correcting the voters lists pertaining to 48 - Shalibanda which shows voters from far off places as voters of Shalibanada division as illegal and unconstitutional and consequently direct the respondents to declare the population of 48 -Shalibanda as 59,826 and to identify the correct total number of S.C, S.T people and also women in this ward to be followed by enumeration of B.C voters and then only reserve this ward for appropriate category while transferring the voters names from Shalibanada-48 ward to the respective divisions correctly as per the house numbers as mentioned in the final notification of delimitation of wards and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

(Reproduced Verbatim)

2. I have heard the submissions of the learned counsel for the writ petitioner, the learned Advocate General for the State of Telangana appearing for the first respondent, the learned standing counsel for the second respondent-GHMC and the learned senior counsel for the third respondent-Telangana State Election Commission. I have perused the material record.

3. At the time of hearing, the learned counsel for the writ petitioner, while making submissions in line with the pleadings in the affidavit filed in support of the writ petition, would submit that the second respondent-GHMC may be directed to consider the representation of the writ petitioner dated 14.12.2015 on the following two aspects only, viz., (i) voters from Himayathnagar and Vidyanagar divisions were shown as voters of 48-Shalibanda division in various polling stations; and (ii) the population of all the enumerated blocks in the division together has to be taken as total population of the ward as each division of Greater Hyderabad Municipal Corporation comprises of identified enumerator blocks and that each such

enumerator block comprises of certain number of houses and citizens who are residents of such block. He would further submit that in the facts and circumstances of the case, the said representation of the writ petitioner deserves to be considered and disposed of by the second respondent on the two aspects aforementioned. He had made it clear that the writ petitioner is not seeking any other reliefs in regard to delimitation or fresh enumeration, but is only canvassing his case on the material already available with the GHMC on the said two aspects of the matter.

4. Sri G.Vidya Sagar, the learned senior counsel appearing for the third respondent-Telangana State Election Commission would submit that the Telangana State Election Commission is going by the list of voters furnished by the Election Commission of India and that the notification for elections to GHMC is not yet issued and it is going to be issued shortly.

5. The learned Advocate General for the state of Telangana appearing for the first respondent would submit as follows:-

“The writ petition is not maintainable as the writ petitioner did not seek permission to file the writ petition in a representative capacity. This is not a litigation in public interest. The writ petitioner is not entitled to represent the cause of all the voters in the Shalibanda Division. The entire machinery of GHMC is now involved in doing the necessary work for the elections to be conducted as per the directions of a Division Bench of this Court. In the present circumstances, at this belated hour, it is not possible to consider any representations. Article 243-ZG of the Greater Hyderabad Municipal Corporation Act, 1955, stipulates that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZF shall not be called in question in any Court; and, no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. Thus, the said provision imposes a bar on interference by Courts in electoral matters. There is a writ order of the Division Bench of this Court to conduct elections to GHMC within a time

frame and that therefore, efforts are being made in that direction. The GHMC has also to abide by the instructions of the State Election Commission.” The learned Advocate General, thus, had vehemently opposed for any order being granted to the writ petitioner emphasising that in the present circumstance under which the State Government is placed, it is not possible to consider any representations. He would alternatively submit that in case this Court is inclined to grant any relief to the writ petitioner, the relief may be confined to the individual case of the writ petitioner herein and not to that of the other voters in general of Shalibanda Division.

6. Having perused the material record and given earnest consideration to the facts and the submissions, this Court is of the well-considered view that the writ petitioner is neither seeking any fresh enumeration nor requesting for consideration of delimitations, but is only requesting to consider and dispose of his representation only on the two aspects mentioned supra. The writ petitioner, after having invoked the provision of the Right to Information Act, had produced the material in regard to the population enumeration and ward wise total population as per Census 2011 and also the Appendices to the District Primary Census Abstract in support of the contention that the representation of the writ petitioner deserves to be considered and disposed of on the aforementioned two aspects.

7. Coming first to the aspect of maintainability of the writ petition, it is brought to the notice of this Court by the learned counsel for the writ petitioner that in W.P.Nos.36473 of 2015, 38537 of 2015, 40088 of 2015, 41115 of 2015 and 39074 of 2015, which are filed by the individual citizens, interim orders were granted in some of the above writ petitions and that some of the writ petitions were finally disposed of and that all the above writ petitions are filed by individual citizens complaining either the change of divisions or voter list population figures in regard to composition of voters in Wards affecting the reservations or for similar relief/s which is/are being sought for in the present writ petition. Further, the writ petitioner is seeking rational exercise of public power by the respondents in an important matter of elections to the Greater Hyderabad Municipal Corporation. Therefore,

this Court is of the considered view that the contention of the first respondent that the writ petition is not maintainable cannot be countenanced.

8. The bar contained in the provision under Article 243-ZG of the Greater Hyderabad Municipal Corporation Act, 1955 referred to supra is also not applicable to the facts of the case since the only request that is being made by the writ petitioner is to consider and dispose of his representation on the two aspects mentioned supra, which do not require any fresh exercise of field work by the GHMC, but, only require consideration of the information already recorded and which is available with the authorities concerned. Therefore, the contention of the respondents that it is not possible to consider the representation of the writ petitioner also cannot be countenanced.

9. Viewed thus, this Court finds that the writ petition can be disposed of directing the second respondent to consider the representation of the writ petitioner dated 14.12.2015 on the aforementioned two aspects.

10. Accordingly, this writ petition is disposed of directing the second respondent-GHMC to consider the representation of the writ petitioner dated 14.12.2015 on the aforementioned two aspects and pass appropriate orders in accordance with the procedure established by law within a period of one (01) week from today. The time of one (01) week is fixed with the consent of the learned counsel for the parties and the learned Advocate General. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.Seetharama Murti, J

23rd December, 2015
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