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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MS. JUSTICE V.M. VELUMANI

W.P(MD) No.17890 of 2016

and

W.M.P(MD) No.12939 of 2016

Karu.Meyyappan

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its
Secretary,
Department of Local Administration &
Rural Development,
Fort St. George,
Chennai - 600 009.

2.The Tamil Nadu State Election Commission,
represented by its
Commissioner,
Jawaharlal Nehru Road,
Koyambedu,
Chennai.

3.The District Collector,
Sivagangai District,
Sivagangai.

... Respondents

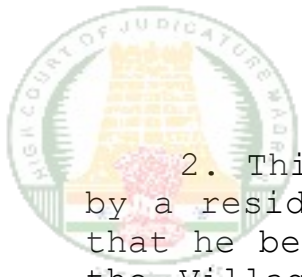
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to make the post of President of Thalakovoor Village Panchayat into a reserved one for Scheduled Caste as per Rules 3 and 7 of the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995.

For Petitioner : Mr.K.Mahendran

For Respondents : Mr.A.K.Baskarapandian,
Special Government Pleader

ORDER

(Order of the Court was made by M.SATHYANARAYANAN,J.)



2. This writ petition is filed as Public Interest Litigation by a resident of Thalakavoor Village, stating among other things that he belongs to Scheduled Caste community and the election for the Village Panchayat and the Panchayat Union and the District Panchayat is governed by the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995 and as per Rule 5 of the said Rules, the Government has to reserve for persons belonging to the Scheduled Castes and Scheduled Tribes and for women. In every Village Panchayat, the Panchayat Union Council and the District Panchayat, not less than one-third shall be reserved including the persons belonging to scheduled Castes and Scheduled Tribes, out of the total number of seats fixed under Rule 3 of the Tamil Nadu Panchayats (Fixation of Strength of Members and Division of Wards) Rules, 1995.

3. The petitioner also expresses his grievance that ever since inception of the Village Panchayat of Thalakavoor Village, was made as a General one and never reserved for the people belonging to Scheduled Caste till now and as per the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995, the post of President should be reserved for the Scheduled Castes and Scheduled Tribes in the interval of ten years and though nearly 20 years had lapsed, the said exercise has not been done. The petitioner also claims that Thalakavoor Panchayat is having a population of about 4000 people (Male - 2000 & Female - 1900), among which, 600 people belong to Scheduled Caste community and ever since 1975 till date, no seat has been reserved for the post of Panchayat President as per the above said Rules and in this regard, a representation was sent as early as on 27.06.2011 to the third respondent with copies marked to the other respondents, for which, the third respondent sent a response on 05.07.2011 stating that the right of allotment of reservation rests with the Government as per the Tamil Nadu Panchayats Act, 1994.

4. The petitioner would further state that necessary information was also sought for from the second respondent by invoking the provisions of the Right to Information Act and the Information Commissioner, vide proceedings, dated 19.09.2011, had informed the petitioner that the President of Thalakavoor Village was allotted for General only during the year 2006 as per the said Rules and only after the lapse of 10 years, they will take steps to reserve the same for Scheduled Caste community on rotation basis.

5. The petitioner was under the fond hope that in the light of the communication, the reservation of the post of the President of Thalakavoor Village for the Scheduled Caste will be done in the year 2016 and they had also submitted a representation dated 30.08.2016 to the respondents 2 and 3 as



well as to the Honourable Chief Minister's Grievance Cell and despite the receipt and acknowledgment, he has not been responded favourably and therefore, he came forward to file the present writ petition.

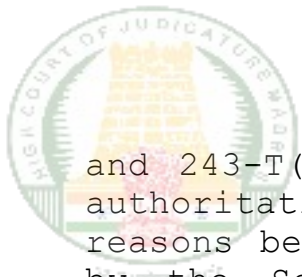
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6. Mr.K.Mahendran, learned Counsel for the petitioner would contend that Article 243-D of the Constitution of India speaks about reservation of seats and as per Article 243-D(3), not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat and despite the said constitutional mandate, the first respondent did not do so and since necessary steps have been taken by the petitioner very much prior to the announcement of the local body elections, the election process insofar as Thalakovoor Village may be stayed with a direction, directing the respondents to file their counter affidavits.

7. Per contra, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents 1 and 3 would submit that the third respondent had sent a written communication/instructions to him, dated 23.09.2016, enumerating the procedures to be followed insofar as the reservation of seats and as per the said communication, as per 2011 Census, the total Scheduled Caste population in Thalakovoor Village is 524 and the percentage of Scheduled Caste population is 14.266% and as per the prescribed formula, the exercise was done and a fair decision has been taken to provide reservation to General (Women Category) and it cannot be faulted with for the reason that it has been done in accordance with Rule 7 of the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995 and it was also published in the Tamil Nadu Government Gazette Extraordinary No.209, dated 06.09.2016.

8. It is the further submission of the learned Special Government Pleader appearing for the respondents 1 and 3 that since the local body election has already been announced, any interim order may result in adverse consequences and prays for the dismissal of this writ petition.

9. In response to the said submission, the learned Counsel for the petitioner has placed reliance upon the judgments of the Honourable Supreme Court in (i) **Union of India v. Rakesh Kumar** reported in **(2010) 3 MLJ 145 (SC)** and (ii) **K.Krishna Murthy (Dr.) v. Union of India** reported in **(2010) 4 MLJ 393 (SC)** and would submit that the Honourable Supreme Court has also pointed out the importance of the reservation provided under Articles 243-D(6)



and 243-T(6) of the Constitution of India and despite the said authoritative pronouncements, the first respondent, for the reasons best known to them, has overlooked the concern expressed by the Scheduled Castes belonged to Thalakovoor Village and reserved the seats for General (Women Category) and prays for interim orders.

10. This Court paid it's best attention to the rival submissions and perused the materials available on record.

11. Section 20 of the Tamil Nadu Panchayats Act, 1994, speaks about the reservation of seats and the same is extracted hereunder:

"20. Reservation of seats.- (1) Seats shall be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in every Panchayat Union Council and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by the direct election in that Panchayat Union Council as the population of the Scheduled Castes in that Panchayat Union area or of the Scheduled Tribes in that Panchayat Union area bears to the total population of that area:

Provided that for the first election for the Panchayat Union Council to be held immediately after the commencement of this Act, the provisional population figures of the Panchayat Union as published in relation to 1991 census shall be deemed to be the population of that Panchayat Union.

(2) Seats shall be reserved for women belonging to the Scheduled Castes and the Scheduled Tribes from among the seats reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes which shall not be less than one-third of the total number of seats reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes.

(3) Seats shall be reserved for women in the Panchayat Union Council and the number of seats reserved for women shall not be less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats in the Panchayat Union Council:

Provided that such seats reserved for women shall be allotted by rotation to different wards in such manner as may be directed by the Inspector.

(4) The reservation of seats under sub-sections (1) and (2) shall cease to have effect on the



expiration of the period specified in Article 334 of the Constitution.

Amendment vide The Tamil Nadu Act 5 of 2016:

"In Section 20 of the Principal Act,-

(1) in sub-section (2), for the expression "one-third", the expression "fifty per cent" shall be substituted;

(2) in sub-section (3), for the expression "one-third", the expression "fifty per cent" shall be substituted."

12. The Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995, came into being in exercise of powers conferred by sub-section (1) of Section 242 read with Sections 11, 20, 32 and 57 of the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994) and it is in consonance with the above said Articles of the Constitution of India.

13. Rule 3 speaks about the reservation of seats for the members of Scheduled Castes and Scheduled Tribes and Rule 5 speaks about reservation of seats for Women and Rule 7 speaks about rotation of reserved seats and office and it is relevant to extract the same hereunder:

"3. Reservation of seats for the members of Scheduled Castes and Scheduled Tribes.- (1) In every Village Panchayat, Panchayat Union Council and District Panchayat, the number of seats reserved for the persons belonging to the Scheduled Caste and Scheduled Tribes out of the total number of seats fixed under Rule 3 of the Tamil Nadu Panchayats (Fixation of Strength of Members and Division of Wards) Rules 1995 in the Village Panchayat, Panchayat Union Council or District Panchayat, as the case may be, shall bear as nearly as may be the same proportion to the total number of seats to be filled by direct election in that Village Panchayat, Panchayat Union Council or District Panchayat, as the case may be, as the population of the Scheduled Castes or of the Scheduled Tribes in that Village Panchayat area, Panchayat Union Council area or District Panchayat area, as the case may be, bears to the total population of that area.

(2) While determining the number of seats to be reserved in favour of Scheduled Castes or Scheduled Tribes any fraction shall be ignored.

(3) Among the seats reserved for Scheduled Castes or Scheduled Tribes not less than one-third shall be reserved for women belonging to Scheduled Castes / Scheduled Tribes:



Provided that if the number of seats reserved for Scheduled Castes or Scheduled Tribes is not more than one, it would not be necessary to reserve any seat for women belonging to the Scheduled Castes and Scheduled Tribes."

"5.Reservation of seats for Women.- In every Village Panchayat, Panchayat Union Council and District Panchayat Council, not less than one-third shall be reserved for women including the number of seats reserved for women belonging to Scheduled Castes and Scheduled Tribes, out of the total number of seats fixed under Rule 3 of the Tamil Nadu Panchayats (Fixation of Strength of Members and Division of Wards) Rules, 1995."

"7. Rotation of reserved seats and office.- (1) Reservation of seats or offices under Rules 3, 5, and 6, shall be made in the Ward or Territorial Ward or Panchayat where the population of the Scheduled Castes, Scheduled Tribes, women, as the case may be, is comparatively large to the total population of the Ward or Territorial Ward or the Panchayat by adopting a list of Wards or Panchayats arranged in the descending order of the percentage of Scheduled Castes, Scheduled Tribes and Women:

Provided that such seats reserved for women in Wards of Village Panchayats or Panchayat Unions or Territorial Wards of District Panchayats and such seats reserved for Scheduled Castes, Scheduled Tribes, for women in the office of Presidents of Village Panchayats, Chairpersons of Panchayat Union Councils and Chairpersons of District Panchayats, shall be allotted by rotation at the expiry of every ten years and re-allotted to other Wards or Territorial Wards or Panchayats where the percentage of population of women or Scheduled Castes, Scheduled Tribes, as the case may be, is next larger to the total population of that Ward, Territorial Ward or Panchayat, by adopting a list of Wards or Panchayats arranged in the descending order of the percentage of Scheduled Castes, Scheduled Tribes and Women.



(2) Notwithstanding anything contained in sub-rule (1):

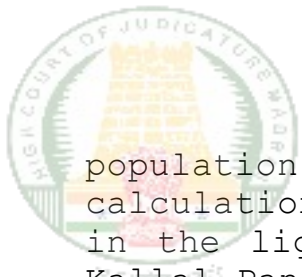
(a) the seats reserved for persons belonging to the Scheduled Castes and Scheduled Tribes in the Wards or Territorial wards, as the case may be of the Village Panchayats, Panchayat Unions and District Panchayats under sub-rule (1) shall, subject to the change if any in the number of seats to be reserved in such Wards for the persons belonging to the Scheduled Castes and Scheduled Tribes due to adoption of the population as ascertained at the last preceding census of which relevant figures have been published, continue to be reserved as such, until the Government direct otherwise.

Explanation 1: - If there is increase in the number of seats to be reserved for Scheduled Castes and Scheduled Tribes by adopting the population as ascertained at last preceding census of which relevant figures have been published, such increased seat or seats shall be reserved in Wards where the population of the Scheduled Castes and Scheduled Tribes as the case may be is comparatively large by adopting a list of Wards excluding the Wards already reserved, arranged in the descending order of the percentage of Scheduled Castes and Scheduled Tribes.

Explanation 2: - In case of reduction in the number of seats to be reserved for Scheduled Castes and Scheduled Tribes by adopting the population as ascertained at the last preceding census of which relevant figures have been published, a list of reserved Wards arranged in the descending order of the percentage of Scheduled Castes and Scheduled Tribes shall be prepared and the Wards having a least percentage of such population shall be de-reserved to the extent necessary.

(b) The Offices of the Presidents of the Papapatti, Keeripatti and Nattarmangalam Village Panchayats in Madurai district and Kottakatchiyendal Village Panchayat in Virudhunagar district reserved for the Scheduled Castes shall continue to be reserved as such until the Government direct otherwise."

14. A perusal of the written instructions given by the third respondent to the learned Special Government Pleader appearing for the respondents 1 and 3 would disclose that for the purpose of reservation, 2011 Census has been taken into consideration and as per the said Census, the total population of Scheduled Castes in Thalakovoor Village is 524 and the percentage of total



population of Scheduled Castes is 14.266% and accordingly, a calculation has been done and as per the prescribed formula and in the light of the said exercise, seven Village Panchayats of Kallal Panchayat Union have been reserved for Scheduled Castes in which population of Scheduled Caste is comparatively large and whereas the population of Scheduled Caste of Thalakavoor Village is less than that of the said seven Village Panchayats chosen for reservation for Scheduled Castes.

15. The total population as per 2011 Census as regards Thalakavoor Village is 3,673 and total population of Scheduled Castes is 524 and the percentage of population of Scheduled Castes is 14.2663% and therefore, it *prima facie* appears that a fair decision has been taken to reserve the seat for General (Women Category).

16. In the considered opinion of this Court, *prima facie*, the said exercise has been done in accordance with the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995.

17. Section 258 of the Tamil Nadu Panchayats Act, 1994, speaks about Election Petitions and as per sub-section (2) of Section 258, an Election Petition calling in question any such election may be presented on one or more of the grounds specified in Section 259 by any candidate at such election, by any elector of the ward concerned or by any member.

18. Section 259 of the Tamil Nadu Panchayats Act, 1994, deals with grounds for declaring the election to be void and as per Section 259(1)(d)(iv), one of the grounds, is that "*by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the Court shall declare the election of the returned candidate to be void.*"

19. The learned Counsel for the petitioner insists for admitting the writ petition, so as to enable the official respondents to file their counter affidavits. In the considered opinion of this Court, in the light of the stand taken by the third respondent in her written instructions, coupled with the reasons assigned as above, this Court need not do so.

20. However, the reasons for rejection of the request of the petitioner have not been communicated to the petitioner and therefore, this Court directs the third respondent to communicate the reasons for rejection of the request made by the petitioner for reservation of the post of Panchayat President for Thalakavoor Village, in favour of the Scheduled Caste people, in consultation with/with concurrence of the first respondent, within a period of ten weeks from the date of receipt of a copy



of this order to the petitioner. If the petitioner is so advised and if it is open to the petitioner under law, he may make a challenge to the said communication before the competent forum.

21. Accordingly, this writ petition is disposed of as above. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/
Assistant Registrar (CS-II)

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Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Department of Local Administration &
Rural Development,
Fort St. George,
Chennai - 600 009.
2. The Commissioner,
Tamil Nadu State Election Commission,
Jawaharlal Nehru Road,
Koyambedu,
Chennai.
3. The District Collector,
Sivagangai District,
Sivagangai.

+1cc to Special Government Pleader in SR.No.56655

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and
W.M.P (MD) No.12939 of 2016
26.09.2016

rsb

PA/PV/SAR I/03.10.2016/9P/5C (IT)