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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Writ Petition (MD).No.992 of 2018

and

W.M.P. (MD).No.1033 of 2018

S.S.Karupaiya

... Petitioner

Vs.

1. The Delimitation Commission Chairman /
The Tamil Nadu State Election Commissioner,
Jawaharlal Nehru Road, Koyambedu,
Chennai 600 106.
2. The Director of Rural Development and Panchayat Raj,
Panagal Maligai, 4th Floor, Abdul Razzak Street,
West Saidapet,
Chennai 600 015.
3. The District Delimitation Authority / District Collector,
Office of the District Collector,
Pudukottai District.
4. The Assistant Director (Panchayats),
District Collector Office Campus,
Pudukottai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus from forbear the respondents to include Karukelatheru Village Panchayat Ward Nos.1 to 4 in Karambakudi Panchayat Union Ward No.15 by considering the petitioner's representation dated 03.01.2018 and 05.01.2018 in accordance with Rule 4(2) of Tamil Nadu Panchayat (Fixation of Strength of Members and Division of Wards) Rules, 1995 and the Regulation Nos.5, 6 and 8 of Tamil Nadu Local Bodies Delimitation Regulations 2017 within the time stipulated by this Court.

For Petitioner

: Dr.R.Alagumani

For R1

: Mr.Raja Karthikeyan

<https://hcservices.ecourts.gov.in/hcservices/>
For R2 to R4

: Mr.A.K.Baskara Pandian

Special Government Pleader

O R D E R

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

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By consent, the writ petition is taken up for final disposal.

2. Mr.Raja Karthikeyan, learned counsel appearing for the first respondent and Mr.A.K.Baskara Pandian, learned Special Government Pleader accepts notice on behalf of the respondents 2 to 4.

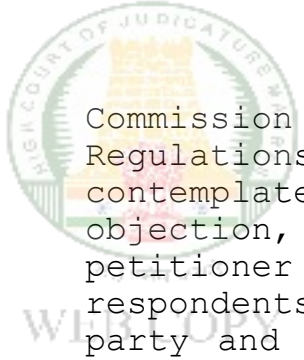
3. The petitioner is the resident of Thirumananjeri, Karambakudi Taluk, Pudukottai District and in the affidavit filed in support of the writ petition would aver among other things that there are 16 Panchayat Union Wards and 39 Village Panchayats are in Karambakudi Panchayat Union and the said classification was made in the year 1996. The petitioner claims that he was an elected Councillor of Ward No.15 of the said Panchayat Union and held office between 2011-2016.

4. The petitioner would further state that the concerned officials had displayed the draft delimitation of wards list in Karmbakudi Panchayat Union Office on 28.12.2017 and on perusal of the same, it was found by the petitioner that the fourth respondent had included 1629 votes from ward Nos.1 to 4 of Karukelatheru Village Panchayat into Ward No.15 and at present, the population is 5250 in Ward No.15 and however, the respondents are attempting to include 1629 persons in Ward Nos.1 to 4 of Karukelatheru Village Panchayat and also given the details in tabular column in paragraph No.5 of the said affidavit. The petitioner also expressed his apprehension that if the respondents include Ward Nos.1 to 4 of Karukelatheru Village Panchayat, several problems bound to arose and there may be a breach of public peace and tranquillity.

5. According to the petitioner, the respondents by doing such delimitation activities in respect of Ward Nos.10, 13, 15 and 16 to suit the needs and welfare of the office bearers of the ruling political party.

6. The petitioner also took a stand that the draft delimitation relating to Ward No.15 of Karambakudi Panchayat Union is per se in violation of Rule 4(1) and 4(2) of Tamil Nadu Panchayat (Fixation of Strength of Members and Division of Wards) Rules, 1995 and in this regard, he has submitted his detailed objections dated 05.01.2018 to the respondent No.3 and since no response is forthcoming, came forward to file this writ petition.

7. Dr.R.Alagumani, learned counsel appearing for the petitioner has drawn the attention of this Court to the materials placed in the writ petition as well as the provisions of Tamil Nadu Delimitation



Commission Act, 2017 and Tamil Nadu Local Bodies Delimitation Regulations, 2017 and would submit that the relevant rules also contemplate inviting of the objections, consideration of the objection, while doing the process of delimitation and the petitioner is under the genuine apprehension, the official respondents may side with the office bearers of the ruling political party and may not carry out the exercise which they are bound to discharge as per the above cited statutory provisions and therefore, constrained to approach this Court by filing this writ petition.

8. Per contra, Mr.Raja Karthikeyan, learned counsel appearing for the first respondent would submit that the mandate cast upon the concerned officials in terms of the above said Act and Rules would be scrupulously complied with and the apprehension being expressed by the petitioner, is wholly unfounded.

9. Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents 2 to 4 would submit that the apprehension and rather allegation of bias levelled against the petitioner is devoid of merits and truth merits and substance and on the basis of mere apprehension, this Court cannot take cognizance of the allegations levelled by the petitioner and pass orders and on instructions would submit that the concerned official respondents are statutorily bound to implement the provisions of the said statute and rules, in letter and spirit.

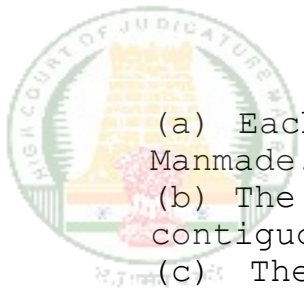
10. This Court has carefully considered the rival submissions and perused the materials placed before this Court.

11. The Tamil Nadu Delimitation Commission Act, 2017 (Tamil Nadu Act 23 of 2017) got passed in the Legislative Assembly of Tamil Nadu and received the assent of the Governor on 11.07.2017. As per the object of the said Act, it is an Act to provide for the Constitution of Delimitation Commission for delimitation of territorial wards of Village Panchayats, Panchayat Unions, District Panchayats, Town Panchayats, Municipalitys and Municipal Corporations and for matters connected therewith or incidental thereto.

12. The Tamil Nadu Local Bodies Delimitation Regulations, 2017 came to be framed in exercise of powers conferred by Section 12 of the said Act and it came into force on 01.09.2017.

13. It is relevant to extract Rules 6, 8 and 9 of the said Rules:

6. *Duties of Delimitation Authorities.*-(1) The Delimitation Authorities of the Local Body concerned shall prepare the draft proposal for delimitation of every Local Body into territorial wards, based on the following criteria, namely:



- (a) Each ward shall have clear boundaries, either Natural or Manmade.
- (b) The shape of each ward shall be geographically compact and contiguous.
- (c) There shall be no gerrymandering for the purpose of consolidation of specific vote banks.
- (d) 10% (ten per cent) variation of population shall be permissible for making clear boundary in territorial wards. In the case of Village Panchayats, such variation shall not exceed 25% (twenty five per cent).
- (e) The wards so formed are given a specific number according to their geographical location within the Local Body area starting from the North-West and ending in South-East in a zig-zag manner, contiguously adopting numerals.
- (f) The underlying criteria for delimitation is that each ward of the Local Body concerned shall have parity in population as far as practically possible on the basis of last preceding census:

Provided that where the population figures of any area is not available from the census figures published, the Inspector in the case of Village Panchayats, Panchayat Union Councils or District Panchayats or Town Panchayats or the Commissioner of the Municipalities concerned or the Commissioner of the Municipal Corporations concerned, as the case may be, may determine the population of such area with preference to the voting strength of the area as per the relevant portion of the current electoral roll of the Tamil Nadu Legislative Assembly Constituency.

(2) The Delimitation Authorities shall prepare a detailed map highlighting the boundaries of the local bodies, ward wise and in total for the local body, based on the formula proposed by the Commission.

(3) The Delimitation Authority, after preparation of the Delimitation proposal, shall forward it to the District Delimitation Authority for verification of, and making correction on, such proposal.

8. Process of Delimitation.—The number of wards as they exist on the date of commencement of the Act shall be maintained and the delimitation shall be done based on the increased population as ascertained in the last preceding census providing parity in representation in all the wards within the respective local body. For the purpose of delimitation of territorial wards of Local Bodies, the following factors shall be taken into account namely:—

- (a) (i) The Commission shall prepare the formula for preparing the proposal for draft delimitation order and organise training for the Delimitation Authorities at the

State level in the first instance and then at the district level in the respective districts.

(ii) The formula shall be the same for all the Local Bodies and shall be within the provisions of the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994) and the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) and the respective Corporations' Acts with regard to population strength of the delimited wards.

(iii) In the event of any variation of more than the permissible limit specified in the relevant rules with regard to specific wards in respect of the strength of the ward population, the same shall be approved only with the specific orders of the Commission.

(b) The size of the ward for Local Bodies shall be determined based on the population of the last preceding census of which the relevant figures have been published.

(c) The Commission shall authorize the District Delimitation Authority or any authority designated by the Commission to cause the publication of the draft delimitation order in the offices of the Local Body concerned and other public offices and in local newspapers, if necessary, and invite public objections and suggestions on the draft delimitation order.

(d) The Commission directs the District Delimitation Authority or the officers designated by the Commission to receive objections or suggestions, from political parties and individuals alike on the draft delimitation order.

(e) Objections or suggestions on the draft delimitation order shall be given to the appropriate authority in person or by registered post. If any document is intended to be produced along with the above, self attested copies of such documents shall also be given and such documents shall not be returned.

(f) All the objections or suggestions received shall be numbered and each objections or suggestions shall be enquired into by the officers appointed for the said purpose and the findings shall be recorded.

(g) If the Commission or the designated authority is convinced that the service of officers of other departments or experts are necessary for the disposal of any objection or suggestion, it shall have the power to summon such officers of any department under the Government for collecting such information. The officers concerned are bound to obey the intimations received from the Commission or the designated authority.

(h) The Commission or the designated authority can summon any person as witness relating to any objection or suggestion received and can request any person including the person who has given the objection or the opposite party to produce the connected documents or records before the Commission or the designated authority.



(i) Upon the receipt of any objection or suggestion regarding the fixing of boundary of wards, the Commission or the designated authority shall verify the objection or suggestion by conducting a hearing in person after collecting the information from the Local Body concerned.

(j) The District Delimitation Authority or any other Officer authorized by him for the said purpose shall hear the parties and give direction to the relevant Executive Authority of the Local Body to submit revised proposal recommending the changes, if required, based on the findings and reasonableness of the requests.

(k) The revised proposals shall be consolidated after due verification by the District Delimitation Authority and recommended to the Commission along with Certificate of Verification as to the genuineness of the objections or suggestions.

(l) The Commission shall, after scrutiny of all the proposals received from the District Delimitation Authority, recommend the same to the Government for final notification.

9. *Functions of Delimitation Commission.*-Taking into consideration of the functions enumerated in section 4 of the Act, the Commission shall have to perform its functions on the final draft proposal on delimitation of territorial wards of Local Bodies. The Commission shall after due examination and verification of the correctness of the draft proposal of delimitation of wards, forward the same with its recommendation thereon to the Government for publication of the delimitation of territorial wards for Local Bodies, as required under the respective Acts for the time being in force.

14. The petitioner, with regard to the Delimitation exercise being carried out, has submitted his objection in the form of the representation dated 05.01.2018

15. Rule 8 extracted above speaks about the process of Delimitation and as per Sub Rule 8(i) "upon the receipt of any objection or suggestion regarding the fixing of boundary of wards, the Commission or the designated authority shall verify the objection or suggestion by conducting a hearing in person after collecting the information from the Local Body concerned" and as per Sub Rule (j) of Rule 8 "the District Delimitation Authority or any other Officer authorized by him for the said purpose shall hear the parties and give direction to the relevant Executive Authority of the Local Body to submit revised proposal recommending the changes, if required, based on the findings and reasonableness of the requests.

16. The learned counsel for the first respondent on instructions would submit that such an exercise is being carried out.



17. In 2015 (4) L.W. 681 (Division Bench), a Public Interest Litigation was filed by the Bar Association of Pudukottai, praying for issuance of a Writ of Certiorari to quash the Notification, dated 13.08.2007 issued jointly by the Chief Electoral Officer and the Secretary to Government Public (Elections) Department.

18. Insofar as it relates to the abolition of the Parliamentary Constituency of Pudukottai as it stood in the proposal Notification dated 05.04.2007 and to direct the Delimitation Commission of India, the second respondent therein to restore the said Constituency as one of the Parliamentary Constituencies.

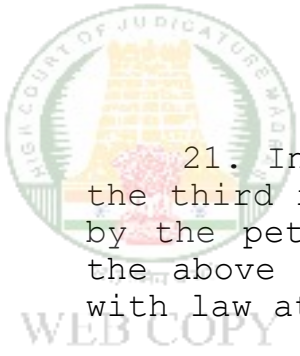
19. The Division Bench of this Court, has gone into the provisions of the Delimitation Act and Rules framed thereunder in extension and it is relevant to extract certain portion in paragraph-31 of the said Act.

"... Therefore, the decision has been taken after public sitting in which objections and suggestions were made. The Delimitation Act, 2002, does not provide for a further opportunity on the changes which the Delimitation Commission has deliberated during public sitting...."

"In fact in the absence of any such provision, the petitioner cannot seek to read into the statutory provision, which has not been explicitly provided for. In such circumstances, we are fully satisfied that the procedure under the Delimitation Act, 2002, has been followed and the final notification has been issued after considering the objections/suggestions in the public sitting held at Tiruchirapalli, where the views of the participants were recorded."

"... Admittedly, the Delimitation Commission is vested with the power to rearrange the Constituencies and the exercise of such power must be assumed that it was for good reasons. The reasons assigned by the Commission for rearranging the constituencies after the public hearings does not smack of any arbitrariness for this Court to interfere in the matter nor would this Court interfere in the light of the Constitutional bar."

20. As already pointed out, the said exercise is yet to be completed and therefore, the apprehension expressed by the learned counsel appearing for the petitioner that the officials, may side with the office bearers of the Ruling Party and may not exercise their power conferred in the statute properly, in the considered opinion of this Court, it lacks merit. At the same time, this Court reminds the official respondents that they are duty bound to carry out the mandate case upon them under the provisions of the Delimitation Commission Act, 2002 as well as the Tamil Nadu Local Body Delimitation Regulations, 2017, in letter and spirit.



21. In the light of the said factual aspect, this Court directs the third respondent to take into consideration the objections given by the petitioner as well as any other objectors, in the light of the above said provisions, and take appropriate steps in accordance with law at the earliest.

22. The Writ Petition stands disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Crl.Side)
/True Copy/
Sub-Assistant Registrar

To

1. The Delimitation Commission Chairman /
The Tamil Nadu State Election Commissioner,
Jawaharlal Nehru Road, Koyambedu,
Chennai 600 106.
2. The Director of Rural Development and Panchayat Raj,
Panagal Maligai, 4th Floor, Abdul Razzak Street,
West Saidapet,
Chennai 600 015.
3. The District Delimitation Authority / District Collector,
Office of the District Collector,
Pudukottai District.
4. The Assistant Director (Panchayats),
District Collector Office Campus,
Pudukottai District.

+One cc to Mr.Rajakarthikeyan, Advocate, SR.No.43191
+One cc to Mr.R.Alagumani, Advocate, SR.No.42772
+One cc to The Special Government Pleader, SR.No.42880

akv
RL/8C/8P/KK/SAR1/6/2/2018