

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/7/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.20081 of 2019

D.Vijayakumar

...

Petitioner

Vs

1. The Election Commissioner
Tamil Nadu State Election Commission
208/2 Jawaharlal Nehru Road
Arumbakkam
Chennai 600 105.

2. The District Election Officer/
District Collector
Erode District
Erode 638 011.

3. The Commissioner
Erode Corporation
Erode 638 001.

...

Respondents

Prayer Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to retain E Block (Slum Clearance Board, Periyar Nagar) with the existing Ward No.44 in compliance with Rule 3 of the above Tamil Nadu Panchayats, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, 1996, by considering the petitioner's representation, dated 3/5/2019.

For petitioner ... Mr.N. Manokaran

For respondents ... No appearance for R.1

Mr.Akhil Akbar Ali
Government Advocate for R.2.

Mr.Raja Mathivanan
for R.3.

O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Instant writ petition, is for a writ of mandamus, directing the respondents, to retain E Block (Slum Clearance Board, Periyar Nagar) with the existing Ward No.44, in compliance with Rule 3 of the Tamil Nadu Panchayats, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, 1996, by considering the petitioner's representation, dated 3/5/2019.

2. Petitioner states that he is residing in Ward No.44, in Erode Corporation which comes under the jurisdiction of Commissioner, Erode Corporation, third respondent. Petitioner was elected as a Councilor of Ward No.44, which consists of 41 streets and total voters, as per the list is 6441. He is living in E Block of Periyar Nagar Slum Clearance Board, in which nearly 480 Scheduled Caste families are living, in which 1325 voters are there in E block. Petitioner's block was in Ward No.32 and it was bifurcated and changed as Ward No.37. In the year 1984, by way of delimitation of wards, the said block was brought to Ward No.44.

3. Petitioner states that the District Collector, Erode Corporation, has singled out E block, in Slum Clearance Board, from Ward No.44 and now annexed it with Ward No.45. A rough plan has been prepared for delimitation purpose. It is the contention of the petitioner that delimitation has not taken place, in consonance of Rule 3 of the Tamil Nadu Panchayats, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, 1996. According to the petitioner, Rule 3 stipulates that there should be equal population with the exception given in the said rule itself. Petitioner states that he had given a representation, on 3/5/2019, opposing the segregation of E block, from Ward No.44. Since the representation of the petitioner has not been considered, petitioner has come forward with the instant writ petition praying for the relief as stated therein.

4. Rule 3 of the Tamil Nadu Panchayats, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, 1996 violation of which has been complained of, reads as under:-

Division of Wards and Divisions - (1). For the purpose of election of councillors to every Town Panchayat or Municipal Council or Municipality or Corporation, the area of every such Town Panchayat or

Municipality or the Corporation, shall be divided by the Inspector, in the case of Town Panchayat and by the Government, in the case of Municipalities and Corporations, into as many number of wards and divisions as the total number of councillors to be elected in that Town Panchayat, Municipality or the Corporation, as the case may be.

(2). Each ward or division in the Town Panchayat or Municipality or Corporation shall have, as far as possible, equal population except due to factors mentioned in sub-rules (3) and (4) below.

(3). Every ward or division so divided under sub-rule (1) shall be compact, contiguous and of easily recognisable areas like colonies, localities, streets, natural boundaries, etc., and also consist, as far as practicable, full streets.

(4). Every ward or division so divided shall not cut across an Assembly Constituency boundary or natural boundaries such as river, canal etc.

Explanation - Where the population figures to any area cannot be ascertained from the census figures published, the Inspector of Town Panchayats or the Government, as the case may be, may determine the population of such area with reference to the voting strength of the area as per the relevant portion of the current electoral roll of the Tamil Nadu Legislative Assembly Constituency."

5. Apart from making a bald allegation that Rule 3 has been violated, petitioner has not stated as to how the said Rule stands violated. Similar question arose before a Hon'ble Division Bench of this Court, in BAR ASSOCIATION, rep. BY ITS SECRETARY Mr.G.RAMALINGAM, PUDUKOTTAI Vs. THE CHIEF ELECTORAL OFFICER, SECRETARY TO GOVERNMENT PUBLIC (ELECTIONS) DEPARTMENT, SECRETARIAT, CHENNAI 600 009 and others, {2015-4-L.W.-681}, a Hon'ble Division Bench dismissed the writ petition, as under:-

"18. Two issues fall for consideration in this Writ Petition. Firstly, with regard to the maintainability of the Writ Petition and secondly as to whether the procedure contemplated under the Delimitation Act, 2002 was followed and opportunity was granted to place the objections.

25. The second issue is as to whether the procedure contemplated under the Act was followed and

whether there was opportunity granted to put forward the objections. In this regard, we have perused the relevant files circulated by the learned Senior counsel for the respondents and from which we find that public hearing was conducted in Tiruchirappalli and suggestions and objections were invited and several persons have participated and the names of those persons who had participated during the hearing has also been recorded by the Delimitation Commission. Hence, it is not a case where there was no opportunity afforded to put forth the suggestions/objections.

26. The submissions of the learned Senior counsel for the petitioner is that in the draft notification, the name of Pudukottai Constituency was found, but, when the impugned notification was issued, the Constituency was dismantled and all six Assembly Constituencies were allotted to various other Parliamentary Constituencies, thus, depriving Pudukottai from being a Parliamentary Constituency. The counter affidavit filed on behalf of the respondents 2 & 4, explains the matters which were considered during the public sitting, from which it is seen that in the public sitting held at Tiruchirappalli, large number of people raised objections for inclusion of My liaduthurai Assembly Constituency in Chidambaram Parliamentary Constituency and there was a demand to take into consideration the Kollidam river as natural barrier and not to combine the Constituencies of North Kollidam and South Kollidam. Further, in the southern districts of Tamil Nadu viz. Sivagangai, Theni, Ramanathapuram, Thoothukudi, Tirunelveli and Kanyakumari, there was reduction of six Assembly segments due to other areas proportionately having more increase in population and therefore, re-arrangement had to be done and this exercise has been carried out by the Delimitation Commission as a consequence of which the Assembly Constituency of Pudukottai was transferred to neighbouring Karur District and the remaining two Assembly Constituencies were added to the Parliamentary Constituency of Tiruchirappalli. 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 the public sitting.

27. As rightly pointed out by the learned Senior

counsel appearing for the respondents 2 & 4, if such opportunity has to be read into Statute, there can be no finality to the delimitation process. 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 Tiruchirappalli, where the views of the participants were recorded. Accordingly, Issue No. 2 is also decided against the petitioner.

28. The learned Senior Counsel appearing for the petitioner raised yet another contention stating that the deletion of the Pudukottai Constituency was to help certain individuals and that there has been gerrymandering. Referring to the decision of the Devilal (supra), it has been submitted that the deletion of Pudukottai Parliamentary Constituency was made to give unfair advantage to some individuals or political party, which may have interest in constituencies like Mayiladuthurai, Sivaganga, Ramanathapuram and Trichirappalli.

29. In the case of Devilal (supra), the question which arose for consideration is as to the powers of the Madhya Pradesh State Government under Section 106 of the M.P. Panchayats Act, 1962, to modify or alter the constituencies of a block once delimited by a notification issued thereunder after the process of election of the members to the Janapada Panchayat had started particularly without affording an opportunity to the electorate to raise any objection. Considering the factual matrix therein, the Hon'ble Supreme Court pointed out that the combined reading of the provisions of the M.P. Panchayats Act makes it evident that the actual control over the Gram Panchayat in a block is through the Janapada Panchayat for the block and it would also appear that the result of the elections of Janapada Panchayat would depend upon the nature of the electoral roll prepared for each constituency in a block. It was further held that the State Government (Madhya Pradesh) were to issue a notification under Section 106(1) of the M.P., Act for redistribution of the constituencies in a block after the process of election has started, it would necessarily change the whole pattern of voting in the election of members to the Janapada Panchayat and on these facts it was found to be a typical case of gerrymandering, (a

American expression, meaning to arrange election districts so as to give an unfair advantage to the party in power by means of a redistribution act or to manipulate constituencies generally).

30. It has to be noted that in the said decision, the question which arose for consideration under the relevant State enactment is, as to whether the impugned action of re-distribution of constituencies in a block was made after the process of election had started and on facts, the Hon'ble Supreme Court found that such redistribution of constituencies in a block after the process of election had started was made so as to give an unfair advantage to the party in power. Further, the Hon'ble Supreme Court recorded a factual finding that the whole exercise was malafide and intended and meant to gain control over the Janapada Panchayat and therefore, such redistribution of constituencies was struck down.

31. Firstly it has to be pointed out that there is no specific plea of malafide raised in this Writ Petition and the averment is to the effect that the deletion of Pudukottai parliamentary Constituency has been done by the Delimitation Commission of India to protect the interest of some individuals or political party which may have interest in constituencies like Mayiladuthurai, Sivaganga, Ramanathapuram and Tiruchirappalli. The plea raised is absolutely vague and there is no material placed before the Court by the petitioner to substantiate their plea that the deletion of the constituency was to protect the interest of the some individuals or political party without name such persons or entities. Hence the decision of the Hon'ble Supreme Court in the case of Devilal (supra), does not render any assistance to the case of the petitioner.

32. Admittedly, 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. Therefore, the plea raised by the petitioner that the impugned action is a case of gerrymandering has not been substantiated and hence such plea is liable to be rejected.

6. Judgment of this Court, squarely applies to the facts of this case. As stated earlier, other than making a bald averment in the writ petition and in the representation that the said exercise has been done with an oblique motive, nothing has been stated by the petitioner, as to how action of the government is mala fide. Public hearing ought to have been given, cannot be accepted, because Rules do not provide for any public hearing.

7. Learned counsel for the petitioner places reliance on another Division Bench judgment of this Court, in W.P.(MD)No.992 of 2018 {S.S.Karupaiya Vs. 1. The Delimitation Commission Chairman/The Tamil Nadu State Election Commissioner, Jawaharlal Nehru Road, Koyambedu, Chennai 600 106 and 3 others}, decided on 18/1/2018. In the said case, Division Bench directed the District Delimitation Authority, to consider the objections given by the petitioner therein, for the only reason that exercise was not completed. Paragraph No.20 of the said judgment is being reproduced.

"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."

8. In the present case, unlike in the case of WP.(MD). No.992 of 2018, process of delimitation has been completed. Even though reliance has been made to the Tamil Nadu Local Bodies Delimitation Regulations Act, 2017, Act, petitioner has not pointed out, as to which of the provisions of the Act or Regulations have been violated.

9. In view of the decision of the Hon'ble Division Bench in 2015 (4) L.W. - 681, we are not inclined to grant the writ as prayed for. Accordingly, writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

Mvs.

TO

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208/2 Jawaharlal Nehru Road
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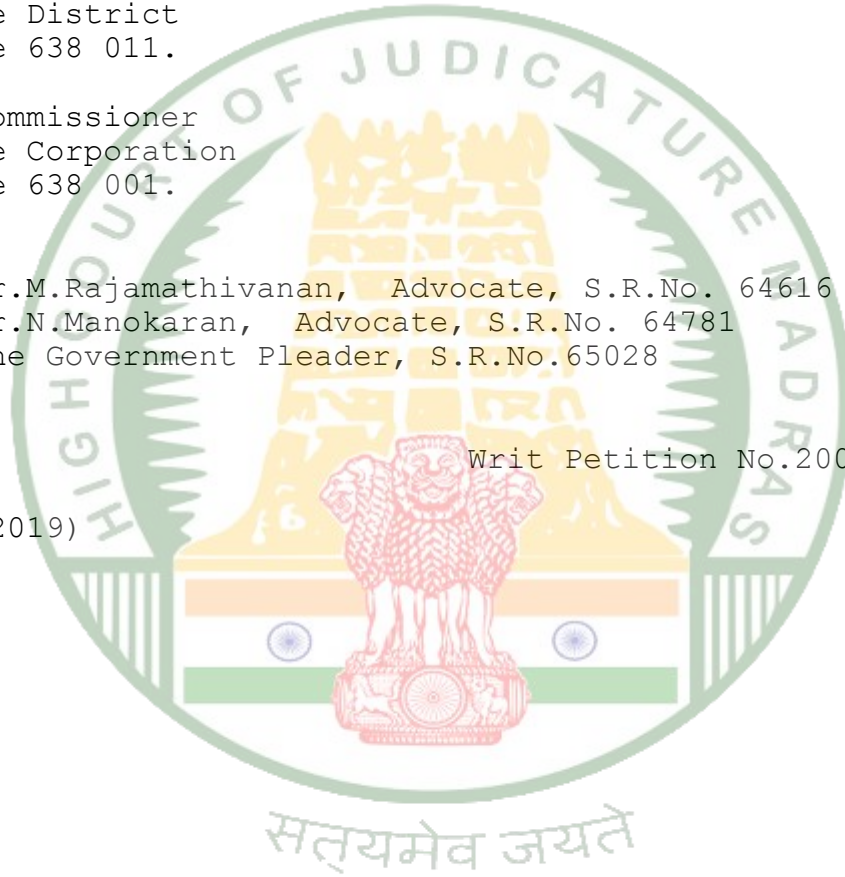
+1cc to Mr.M.Rajamathivanan, Advocate, S.R.No. 64616

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 64781

+1cc to the Government Pleader, S.R.No.65028

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RJ(CO)
GN(08/08/2019)



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