

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.11.2019

PRONOUNCED ON: 19.11.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WRIT PETITION NO.28932 OF 2019
& W.M.P.NO.28679 OF 2019

S.Dhanushkodi,
S/o.Singaraja,
No.223, T.H.Road,
New Washermenpet,
Chennai - 600 081.

... Petitioner

/versus/

1. The Government of Tamil Nadu,
Represented by its Secretary,
Department of Municipal Administration and Water Supply,
Fort St.George,
Chennai - 600 009.
2. The Commissioner,
Corporation of Greater Chennai,
Rippon Building,
Chennai - 600 003.
3. The Commissioner,
Tamil Nadu State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Arumbakkam,
Chennai - 600 106.

.... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of declaration, declaring that notification by Heads of Departments etc published in Part VI Section 2 of Tamil Nadu Government Gazette extraordinary in G.O.Ms.No.VI (2)/46(d)/2019, dated 24.05.2019 is unconstitutional under the provision of Article 14 and 15 of Constitution of India.

For Petitioner : Mr.K.Chandrasekaran

For R1 : Mr.N.Inbanathan
Additional Government Pleader

For R2 : Mrs.Karthika Ashok,
Standing Counsel

For R3 : No appearance

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The Petitioner who is a practising Advocate in Chennai and a member of the Chennai Municipal Corporation during the years 1996 and 2006 representing Ward No.6 in Zone No.1, Cherian Nagar (Now ward No.39) is aggrieved by reserving the ward for Women General. Hence, he is before this Court. Challenging the decision of the Government, reserving more than 50% of the wards for women candidates in Chennai Corporation Council, thereby depriving him from contesting the election.

3. According to the petitioner, under Section 5(5) of the Chennai City Municipal Act, 1919, only 1/3rd of the seats in the Council were reserved for women. This provision was amended by Act 4 of 2016 of Tamil Nadu Municipal Law (Amendment Act) 2016 by increasing the reservation for women to 50%. Hence, the Government Gazette notification in G.O.Ms.No.VI (2)/46(d)/2019, dated 24.05.2019 indicating the wards reserved for persons belonging to SC/ST and women in Chennai City Municipal Corporation is challenged as far as reserving 105 wards for women (89 wards for women General and 16 wards for women SC/ST) out of total 200 wards, which exceeds 50% and contrary to Section 5(5) as amended by Act 4 of 2016.

4. According to the petitioner the de-limitation of ward should be based on sex and population ratio. At no cost, it should exceed the reservation limit. When the statute prescribes 50% seats to be reserved for women, there cannot be more than that. By virtue of the impugned notification, the respondents have reserved 105 seats for women instead of 100 seats. When Courts have repeatedly held there can be no reservation beyond 50%, the notification of the respondent exceeding 50% reservation for women on the face illegal and contrary to Act 15 of the Constitution of India.

5. As per census the sex ratio of Chennai City Corporation voters are 50.33% (male) and 49.66% (female). The Act provides protective discrimination of 50% reservation for women. Exceeding their population ratio, women are statutorily give 50% seats. While so, reserving 105 seats out of 200 seats in unreasonable and excessive.

6. In the counter affidavit, tracing the de-limitation of wards from the year 1996, based on population and expansion of Chennai City Territorial limits, the 2nd respondent states that,

In the year 2011, the City was expanded from 174 Sq.Km to 426 Sq.Km and the number of wards were increased from 155 to 200.

The reservation rule prescribed in the Tamil Nadu Town Panchayats, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, 1996, was adopted afresh considering the whole expanded city as one unit and reservation was made. As per this, 17 wards were reserved for SC (General) and 67 wards (9-S.C(Women) + 58 Women (G1) were reserved for Women.

7. On expansion of area lead to a situation in the core city where women population were high, more seats in core area were reserved for women based on population and in the added area they were not given adequate representation. Hence, to bring rationale and more equitable distribution of women reservation throughout the City, an amendment was proposed to include a proviso as "in respect of Greater Chennai Corporation, Zone will be the unit for the purposes of determining the reservation stipulated in rule 4(3)", of the Tamil Nadu Town Panchayats, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, 1996 to ensure democratic justice.

8. The Learned Counsel for the respondents referring the amended Rule 4(3) of the Tamil Nadu Town Panchayats, Third Grade Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, submitted that the reservation for women was done to ensure in no zone it falls below 50%, since the act fix minimum of 50% to be reserved for women.

9. The detail of Zone wise Reservation of Wards - 2019 is furnished as below:

Zone	No of wards	SC General	SC Women	Women General	Total Women Ward (SC (W) + Women (G))	Percent age of Total Women wards	General	Over all Total
1	14	1	0	7	7	50	6	14
2	8	4	1	3	4	50	0	8
3	11	2	1	5	6	55	3	11
4	15	1	2	6	8	53	6	15
5	15	1	3	5	8	53	6	15
6	15	2	3	5	8	53	5	15
7	15	0	1	7	8	53	7	15
8	15	2	0	8	8	53	5	15
9	18	1	2	7	9	50	8	18
10	16	0	1	7	8	50	8	16
11	13	1	0	7	7	54	5	13
12	12	0	1	5	6	50	6	12
13	13	0	0	7	7	54	6	13
14	11	0	0	6	6	55	5	11
15	9	1	1	4	5	56	3	9
	200	16	16	89	105	53	79	200

10. Whenever the number of wards in a Zone is odd, the fraction is rounded up in favour of women. Therefore, out of 15 Zones, in 10 Zones the number of wards are in odd numbers, therefore there is excess of five seats than the minimum reservation of 50%.

(i). Section 5 of the Chennai City Municipal Corporation Act, 1919, reads as below:

5. Constitution of the council.- (1) The council shall consist of [two hundred] councillors elected in the manner laid down in this Act.

(2) The following persons shall also be represented in the council, namely :-

(a) [Omitted by Tamil Nadu Act 3 of 1997]

(b) the members of the House of the people representing constituencies which comprise wholly or partly the area of the corporation and the members of the Council of States registered as electors within the area of the corporation;

(c) all the members of the Tamil Nadu Legislative Assembly representing constituencies which comprise wholly or partly the area of the Corporation.

(d) [Omitted by Tamil Nadu Act 22 of 1996]

(2-A) The persons referred to in sub-section (2) shall be entitled to take part in the proceedings, but shall not have the right to vote in the meetings of the council.

(3) Seats shall be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in the council and the number of the seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the council as the population of the Scheduled Castes in that city or of the Scheduled Tribes in that city bears to the total population of the city :

Provided that for the first election to the council to be held immediately after the commencement of the Tamil Nadu Municipal Corporation Laws (Amendment and Special Provision) Act, 1994, (Tamil Nadu Act 26 of 1994), the provisional population figures of the city as published in relation to 1991 census shall be deemed to be the population of the city as ascertained in that census.

(4) 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 [fifty per cent] of the total number of seats reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes.

(4-A) [Inserted by Tamil Nadu Act 34 of 1995 and omitted by Tamil Nadu Act 17 of 1996]

(4-B) [Inserted by Tamil Nadu Act 34 of 1995 and omitted by Tamil Nadu Act 17 of 1996]

(5) Seats shall be reserved for women in the council and the number of seats reserved for women shall not be less than [fifty per cent] [including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes of the total number of seats in the council].

(6) The reservation of seats under subsection (3) and (4) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

(ii). Rule 4 sub-rule (3) of the Tamil Nadu Town Panchayats, Third Grade Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, 1996, provides how reservation should be made.

(3). For the purpose of reservation of seats for women, the wards and divisions in every [Town Panchayat, Third Grade Municipality], Municipality and Corporation shall be arranged in a descending order based on the population of women and the wards and divisions having higher percentage of such women population shall be reserved as required.

11. As far as the Chennai City Municipal Corporation is concerned, by virtue of amendment brought on 16.09.2016 vide G.O.Ms.126, Municipal Administration and Water Supply (Election), a proviso has been added, which reads as below:

In the said Rules, in rule 4, to sub-rule (3), the following proviso shall be added, namely:-

"Provided that, in respect of Chennai City Municipal Corporation, Zone shall be the unit for the purpose of determining the reservation stipulated in sub-rule (3)."

12. While, Section 5 (5) of Chennai City Municipal Corporation Act, 1919, states that reservation for woman should be minimum 50% including the number of seats reserved for women belonging to S.C and S.T community, this Court finds nothing unconstitutional in 105 wards reserved for woman out of 200 wards in the council. In this case, the reservation exceeds 50% that to not by any malafide design but by default. Since the amendment to Rule says, Zonal reservation for Chennai Corporation, no zone can have less than 50% wards reserved for women. Therefore, it is inevitable to exceed 50% whenever the zone have odd number of wards.

13. As far as the present case is concerned, the marginal increase in the minimum reservation for women is by default and not by design. In view of proviso added to sub-rule (3) of Rule 4, the delimitation of ward and reservation for women mentioned extracted above is perfectly legal and unless any particular ward which has been perpetually under reservation for more than two terms, the petitioner can have no grievance to agitate. Hence, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Secretary,
The Government of Tamil Nadu,
Department of Municipal Administration and Water Supply,
Fort St.George, Chennai - 600 009.
2. The Commissioner,
Corporation of Greater Chennai,
Rippon Building, Chennai - 600 003.

3. The Commissioner,
Tamil Nadu State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Arumbakkam, Chennai - 600 106.

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.96884
+1cc to Mrs.Karthika Ashok, Advocate, S.R.No.96691
+1cc to the Government Pleader, S.R.No.96563

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PVS (CO)
CS/07/01/2020



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