



WEB COPY

W.P(MD)No.25926 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P(MD)No.25926 of 2019

and

W.M.P(MD)No.22451 of 2019

M.Sekkappa Chettiar

... Petitioner

Vs.

- 1.The Chief Election Commissioner,
Tamil Nadu State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Opposite to CMBT, Arumbakkam,
Chennai 600 106.
- 2.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk,
Chennai-600 005.
- 3.The District Collector,
Pudukkottai, Pudukkottai District.
- 4.The Tahsildhar,
Thirumayam Taluk,
Pudukkottai District.
- 5.The Block Development Officer,
Thirumayam Panchayat Union,
Pudukkottai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents herein to re-notify Ward.No.8, Kulipirai Village, Thirumayam Panchayat Union, Pudukkottai District as General Ward before forthcoming local body elections scheduled to be held on 27.12.2019 and 30.12.2019 by considering the representation dated 01.12.2019 given by petitioner and others on behalf of voters of Ward No.8, Kulipirai Village, Thirumayam Panchayat Union, Pudukkottai District within the time limit as fixed by this Court.

<https://hoseervices.courts.gov.in/hoseervices/>



WEB COPY

For Petitioner : Mr.AL.Kannan
For Respondents : Mr.Raja.Karthikeyan
Standing Counsel for R.1
Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.VR.Shanmuganathan
Special Government Pleader for R.2 to R.5

ORDER

[Order of the Court was made by **M.DURAISWAMY, J.**]

The above writ petition has been filed by the petitioner as a Public Interest Litigation to issue a writ of Mandamus directing the respondents herein to re-notify Ward.No.8, Kulipirai Village, Thirumayam Panchayat Union, Pudukkottai District as General Ward before the forthcoming local body elections scheduled to be held on 27.12.2019 and 30.12.2019 by considering the representation dated 01.12.2019 given by petitioner and others on behalf of voters of Ward No.8, Kulipirai Village, Thirumayam Panchayat Union, Pudukkottai District within a time frame.

2. It is the case of the petitioner that Kulipirai Village Panchayat (Ward No.8) should be re-notified as General Ward before the forthcoming local body elections. Kulipirai Village Panchayat has been reserved for Scheduled Caste community in the forthcoming elections. The petitioner contended that Kulipirai Village Panchayat has got very less number of Scheduled Caste community people and therefore, it should be declared as a General Ward.

3. Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents 2 to 5 produced a copy of the letter sent by the Block Development Officer, Thirumayam Panchayat Union, vide Na.Ka.A2/3816/2019, dated 04.12.2019, wherein it has been stated that in respect of Ward No.3, out of the total population of 654, 98.78% of people belong to Scheduled Caste community and in respect of Ward No.8, i.e., Kulipirai Village Panchayat, out of the total population of 319, 2.51% of people belong to Scheduled Caste community and in respect of Ward No.5, only 1.54% of people belong to Scheduled Caste community and in respect of Ward No.2, only 0.86% of people belong to Scheduled Caste community. Therefore, while reserving 2 Village Panchayats for the Scheduled Castes, the respondents reserved Ward Nos.3 and 8 for the Scheduled Castes.

4. The learned Additional Advocate General in support of his contentions relied upon the following judgments:

(i) In ***N.P.Ponnuswami v. Returning Officer, Namakkal*** reported in ***AIR (39) 1952 Supreme Court 64***, the Honourable Supreme Court held as follows:



"8. The next important question to be considered is what is meant by the words "no election shall be called in question". A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in Section 100 of the Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.

15. It may be pointed out that Art.329(b) must be read as complimentary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Arts.327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Art.329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Art. 226 of the Constitution. If Part XV of the Constitution is a code by itself, i.e., it creates rights and provides for their enforcement by a special tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time-schedule of the elections. The more reasonable view seems to be that Art.329 covers all "electoral matters".

16. The conclusions which I have arrived at may be summed up briefly as follows :-

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters



WEB COPY

and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

(ii) In an unreported judgment of the Division Bench of this Court in **A.Karuppanan v. The State of Tamil Nadu rep. by its Principal Secretary, Department of Municipal Administration and Water Supply, St. George Fort, Chennai and others** [W.P(MD)Nos.20690, 20060 and 21165 of 2019, decided on 17.10.2019], it is held as follows:

"The reliefs sought for in all the writ petitions are identical. Therefore, the writ petitions were heard together and are being disposed of by this common order.

2. The challenge is to a notification issued by the second respondent in G.O.(Ms) No.57, Rural Development and Panchayat Raj (PR-1), dated 20.05.2019, pertaining to reservation of seats in District Panchayat Wards under the Tamil Nadu Panchayats Act, 1994 (hereinafter, referred to as "the Act").

3. The petitioner Mr.A.Karuppanan submits that he is a native of Thoppampatti Village, Manapparai Taluk, Tiruchirappalli District, which comes under Thoppampatti Village Panchayat Ward No.I in Manapparai Panchayat Union. This Ward was declared as a reserved constituency for scheduled caste candidates for more than four tenures. It is submitted that as per the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995, (hereinafter, referred to as



"the Rules), the State Government should have followed the rotation basis and declared the constituency as a general category. However, in the impugned Government Notification, Thoppampatti Village Panchayat Ward No.I was declared as a reserved seat for SC General. It is contended that the petitioner sent a representation to the respondents and requested them to re-allot the seats of the Ward. But, a reply was sent stating that already the Ward has been reserved for Scheduled Caste and therefore, the petitioner is questioning the impugned notification.

10. It is the submission of the learned counsel that there is nothing in Article 243D of the Constitution of India to indicate the reservation for scheduled caste candidate as argued by the learned counsel for the petitioners and the reservation, which is spoken of in the said provision, pertains to the reservation for women. In this regard, the learned counsel has referred to Article 243D(4) and submitted that there is no legal right conferred by the Constitution as projected by the petitioners and the writ petitions are devoid of merits.

11. Further, it is submitted that Rule 7 of the Rules has been amended and this has not been taken note of by the petitioners. Further, the learned counsel referred to Sections 11, 20(3) and 32 of the Act pertaining to reservation of seats and submitted that the contentions raised by the petitioners do not merit consideration.

12. We have elaborately heard the learned counsel for the parties.

13. The first hurdle the petitioners have to surmount is to satisfy this Court that the writ petitions are maintainable. One of the contentions raised by Mr.S.M.Anantha Murugan, learned counsel, is that no delimitation exercise was conducted. This submission is factually incorrect as delimitation exercise has been conducted and notification has been issued assigning the Wards under different categories. The consistent view of the Division Bench of this Court as well as the Honourable Supreme Court in this regard is that there is no scope of interference by this Court in a writ proceedings with the delimitation exercise. Admittedly, no mala fides have been attributed to



nor alleged and established with regard to the exercise undertaken by the respondents before issuing the impugned notification. Therefore, we cannot be called upon to exercise our writ jurisdiction to interfere with the impugned notification, which has been issued after a delimitation exercise has been conducted. The petitioners can never dispute the settled legal position, more so, on the face of the case as projected by them.

14. We agree with the submission of the learned counsel appearing for the respondents 3 and 4 that nothing flows out of Article 243D of the Constitution of India to strengthen the case of the petitioners. Furthermore, Rule 7 of the Rules has undergone a change and sub-rule (2) has been added vide Notification in G.O.Ms No.105, Rural Development (C4) Department, dated 01.09.2006. Sub-Rule (2) commences with a non obstante clause notwithstanding anything contained in sub-rule (1) of Rule 7, (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.

15. Admittedly, fresh census had not been conducted. The delimitation exercise has been undertaken taking note of the population in the area. It is stated that there was realignment of the territorial limits of the Ward and the petitioners are not right in contending that the constituency should automatically stand converted as a general category seat. In the light of the settled legal position defining the limits of jurisdiction of this Court exercising the power under Article 226 of the Constitution of India with such delimitation exercise, we are of the considered view that the petitioners have not made out any case for interference with the impugned notification.

16. In the result, all the writ petitions are dismissed. No costs. Consequently, connected



miscellaneous petitions are closed."

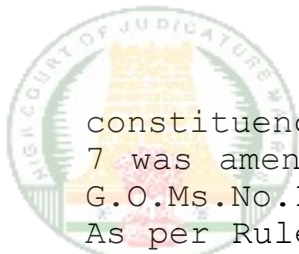
(iii) In an unreported judgment in ***D.Vijayakumar v. The Election Commissioner, Tamil Nadu State Election Commission, 208/2, Jawaharlal Nehru Road, Arumbakkam, Chennai - 600 105 and others*** [W.P.No.20081 of 2019, decided on 29.07.2019], the Division Bench of this Court relying upon the judgment in ***Bar Association, rep. by its Secretary, Mr.G.Ramalingam, Pudukkottai v. The Chief Electoral Officer, Secretary to Government, Public (Elections) Department, Secretariat, Chennai - 600 009 and others*** reported in **2015 - 4 - L.W. - 681**, wherein at paragraph 32, it is held as follows:

"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."

held that unlike in the case of ***S.S.Karupaiya v. The Delimitation Commission Chairman/The Tamil Nadu State Election Commissioner, Jawaharlal Nehru Road, Koyambedu, Chennai - 600 106 and 3 others*** [W.P(MD)No.992 o 2018, decided on 18.01.2018], the process of delimitation has been completed. Even though reliance has been made to the Tamil Nadu Local Bodies Delimitation Regulations Act, 2017, the petitioner has not pointed out as to which of the provisions off the Act or Regulations have been violated and following the judgment of the Division Bench of this Court in **2015 - 4 - L.W. - 681** (cited supra), dismissed the writ petition.

5. The consistent view of the Division Bench of this Court as well as the Honourable Supreme Court with regard to the delimitation is concerned, is that there is no scope for interference by this Court in a writ proceedings. When no *mala fides* have been attributed nor alleged and established with regard to the exercise undertaken by the respondents before issuing the impugned notification, the petitioner cannot now question the reservation made by the respondents. Therefore, we cannot be called upon to exercise our writ jurisdiction to interfere with the impugned notification which has been issued after a delimitation exercise that has been conducted. The delimitation exercise has been undertaken taking note of the population in the area.

6. As per Rule 7 of the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995, the State Government should follow the rotation basis and declare a



constituency as a general constituency. Subsequently, the said Rule 7 was amended and sub-rule (2) has been added vide Notification in G.O.Ms.No.105, Rural Development (C4) Department, dated 01.09.2006. As per Rule 7(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.

7. In these circumstances, we are of the considered view that the petitioner had not made out any case for interference in this writ petition. The *ratio* laid down in the judgments relied on by the learned Additional Advocate General appearing for the respondents 2 to 5 squarely applies to the present case and we do not find any merit in this writ petition.

8. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected writ miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

Sub Assistant Registrar(CS)

rsb

To

- 1.The Chief Election Commissioner,
Tamil Nadu State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Opposite to CMBT, Arumbakkam,
Chennai 600 106.
 - 2.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai-600 005.
 - 3.The District Collector,
Pudukkottai, Pudukkottai District.
 - 4.The Tahsildhar,
Thirumayam Taluk, Pudukkottai District.
 - 5.The Block Development Officer,
Thirumayam Panchayat Union, Pudukkottai District.
- +1 CC to M/s.SPL GP (SR-103822[F] dated 06/12/2019)

W.P(MD)No.25926 of 2019 and

W.M.P(MD)No.22451 of 2019

05.12.2019

sma/20/12/19/8p/7c

<https://hcservices.ecourts.gov.in/hcservices/>