



WEB COPY

W.P(MD)No.26264 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P(MD)No.26264 of 2019

and

W.M.P(MD)No.22674 and 22675 of 2019

T.Muruganandham

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its
Principal Secretary,
Department of Rural Development and Panchayat,
Fort St. George, Chennai - 600 009.

2.Tamil Nadu State Election Commission,
represented by
The Tamil Nadu State Election Commissioner,
No.282/2, Jawaharlal Nehru Road,
Arumbakkam, Chennai - 600 106.

3.The District Collector,
Tiruchirappalli District,
Tiruchirappalli.

4.The Commissioner,
Lalgudi Panchayat Union,
Lalgudi Taluk,
Tiruchirappalli - 621 601.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Gazette Notification in Na.Ka.No.T5/10824/2018, dated 21.05.2019 on the file of the third respondent insofar as reserving the Ward No.1, Melavadikudi Theru, Appadurai Panchayat, Lalgudi Panchayat Union, Tiruchirappalli District under the Scheduled Caste category as illegal and quash the same and consequently, direct the third respondent to issue a fresh notification by reserving the Ward No.1, Melavadikudi Theru, Appadurai Panchayat, Lalgudi Panchayat Union, Tiruchirappalli District under General Category in accordance with Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995, within the time limit stipulated by this Court.



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For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.K.Chellapandian

Additional Advocate General assisted by
Mr.J.Gunaseelan Muthiah

Additional Government Pleader for R.1, R.3 & R.4
Mr.D.Shanmuga Raja Sethupathi for R.2

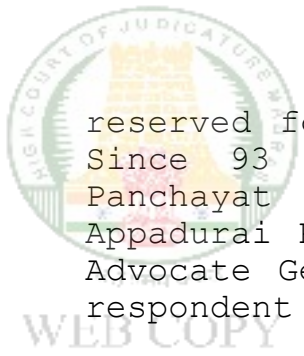
ORDER

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

The petitioner has filed the above writ petition to issue a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Gazette Notification in Na.Ka.No.T5/10824/2018, dated 21.05.2019 on the file of the third respondent insofar as reserving the Ward No.1, Melavadikudi Theru, Appadurai Panchayat, Lalgudi Panchayat Union, Tiruchirappalli District under the Scheduled Caste category as illegal and quash the same and consequently, direct the third respondent to issue a fresh notification by reserving the Ward No.1, Melavadikudi Theru, Appadurai Panchayat, Lalgudi Panchayat Union, Tiruchirappalli District under General Category in accordance with Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995, within a time frame.

2. It is the case of the petitioner that as per 2011 Census, the total population of Appadurai Panchayat is 4019 and the population of Scheduled Castes is 790 which is only 19.65% of the total population. Further, the petitioner contended that in Ward No.1, according to rough estimate, out of total voters of 411, only 39 belong to the Scheduled Caste community which is only 9.48% of the total population. According to the petitioner, in accordance with Rule 3 of the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995, 19.65% of 9 seats that comes to 1.76 which is rounded off to 1 seat in accordance with Rule 3(2) of the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995, should have been reserved for Scheduled Castes in Appadurai Panchayat, however, 4 seats out of 9 seats have been reserved for the Scheduled Castes which is beyond the proportion of seats that can be reserved. In these circumstances, the petitioner has filed the above writ petition to quash the Notification dated 21.05.2019.

3. Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents 1, 3 and 4 submitted that the petitioner is challenging the Notification dated 21.05.2019 after a lapse of more than six months and the petitioner should have challenged the Notification at the earliest point of time. Further, the learned Additional Advocate General submitted that the total population of Lalgudi Panchayat Union is 1,19,238 and out of the same, the total population of the Scheduled Castes are 31,344 and there are 354 wards in the said Union and therefore, 93 wards are



reserved for the Scheduled Castes, i.e., 31,344 / 1,19,238 X 354. Since 93 wards were reserved for Scheduled Castes in Lalgudi Panchayat Union, 4 wards are reserved for Scheduled Castes in Appadurai Panchayat. In these circumstances, the learned Additional Advocate General submitted that the reservation made by the second respondent is proper and no interference is warranted.

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

(i) 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."

(ii) 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."

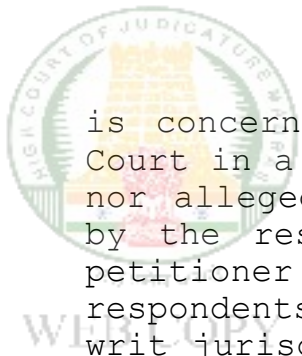
held that unlike in the case of **S.S.Karupaiya v. The Delimitation Commission Chairman/The Tamil Nadu State Election Commissioner, Jawaharlal Nehru Road, Koyambedu, Chennai - 600 106 and 3 others** [W.P(MD)No.992 of 2018, decided on 18.01.2018], the process of delimitation has been completed. Even though 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 learned Counsel for the second respondent also submitted that the reservation has been made for the Scheduled Caste in accordance with Rules and taking into consideration the population.

6. On a careful consideration of materials available on record and the submissions made on either side, it can be seen that the petitioner has questioned the Notification, dated 21.05.2019, after a lapse of more than six months. The petitioner should have challenged at the earliest point of time. Considering the total population of Lalgudi Panchayat Union which is 1,19,238 and the population of Scheduled Castes which is 31,344, 93 wards are reserved for the Scheduled Castes. Admittedly, there are 354 wards in Lalgudi Panchayat Union and therefore, it cannot be said that reserving 4 wards for the Scheduled Castes is improper or irregular. The reservation was done as per the Rules without any deviation whatsoever.

7. As per Article 243-O of the Constitution of India, the validity of any law relating to delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243K, shall not be called in question in any Court. Further, no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

8. 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.

9. 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.

10. 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 1, 3 and 4 squarely applies to the present case and we do not find any merit in this writ petition.

11. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected writ miscellaneous petitions are also dismissed.

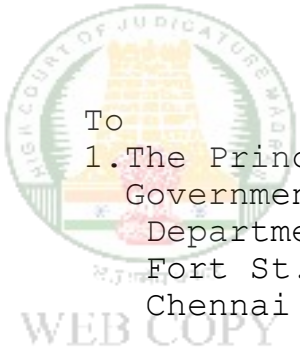
Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

rsb



To

1.The Principal Secretary,
Government of Tamil Nadu,
Department of Rural Development and Panchayat,
Fort St. George,
Chennai - 600 009.

2.The Tamil Nadu State Election Commissioner,
Tamil Nadu State Election Commission,
No.282/2, Jawaharlal Nehru Road,
Arumbakkam,
Chennai - 600 106.

3.The District Collector,
Tiruchirappalli District,
Tiruchirappalli.

4.The Commissioner,
Lalgudi Panchayat Union,
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Tiruchirappalli - 621 601.

W.P (MD) No.26264 of 2019

and

W.M.P (MD) No.22674 and 22675 of 2019

11.12.2019

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