



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2019

CORAM:

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

W.P. (MD) No.26852 of 2019

Jeyaraj

... Petitioner

-vs-

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

2.The Tamil Nadu State Election Commission
State Election Commission
208/2, Jawaharlal Nehru Road (100 Feet Road)
Arumpakam, Chennai-600 106

3.The District Collector
Nagarcoil, Kanyakumari District

4.The Commissioner
Thadikarankonam Panchayat
Thovalai Taluk, Kanyakumari District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus by directing the first respondent to issue a fresh notification by reserving Thadikarankonam Panchayat, Thovalai Taluk, Kanyakumari District for General Category on behalf of the Category of Woman which is allotted for third time consecutively in accordance with Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995 on the basis of the petitioner's representation dated 04.12.2019, within the time period stipulated by this Court.

For Petitioner : Mr.M.Sankar

For Respondents : Mr.K.Chellapandian
Additional Advocate General for R1, R3 & R4
Mr.Raja.Karthikeyan for R2



O R D E R

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

The petitioner has filed the above writ petition as a public interest litigation to issue a writ of mandamus directing the first respondent to issue a fresh notification by reserving Thadikarankonam Panchayat, Thovalai Taluk, Kanyakumari District, for General Category, on behalf of the Category of Woman, which is allotted for third time consecutively, in accordance with Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995, on the basis of his representation dated 04.12.2019, within the time stipulated by this Court.

2. It is the case of the petitioner that Thadikarankonam Panchayat of Thovalai Taluk, Kanyakumari District, has been reserved under the Category of Woman for the third time consecutively and the same has to be reconsidered and the said Panchayat should be reserved for General Category, in accordance with the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995.

3. The learned Additional Advocate General appearing for the respondents 1, 3 and 4 and Mr.Raja.Karthikeyan, learned counsel appearing for the second respondent submitted that in view of Article 243-O of the Constitution of India, the petitioner cannot question the delimitation of constituencies and the election process initiated by the respondent - Election Commission before any Court of law.

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 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."

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(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."

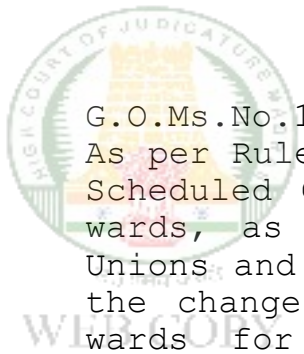
held that unlike in the case of **S.S.Karupaiya v. The Delimitation Commission Chairman/The Tamil Nadu State Election Commissioner, Jawaharlal Nehru Road, Koyambedu, Chennai - 600 106 and 3 others** [W.P(MD)No.992 o 2018, decided on 18.01.2018], the process of delimitation has been completed. Even though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

6. 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 243-K, 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.

7. 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.

8. 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.

9. It is not in dispute that in the case on hand, delimitation has been completed and the reservation has been made taking into consideration the population in the area and giving due representation to the women in the Panchayat Elections.

10. In these circumstances, we are of the considered view that the petitioner has 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.

Sd/-

Assistant Registrar(AS)

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Sub Assistant Registrar(CS)

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To:

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

2.The District Collector,
Nagarcoil,
Kanyakumari District.



3.The Commissioner,
Thadikarankonam Panchayat,
Thovalai Taluk,
Kanyakumari District.

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+1 CC to M/s.M.SANKAR, Advocate (SR-105691[F] dated 18/12/2019)

+1 CC to M/s.SPL.GP (SR-105908[F] dated 19/12/2019)

+1 CC to M/s.RAJA.KARTHIKEYAN, Advocate (SR-106053[F] dated
19/12/2019)

W.P. (MD) No.26852 of 2019
17.12.2019

PM(CO)
TR(08.01.2020) 9P 7C