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W.P(MD)No.3936 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P (MD)No.3936 of 2020

and

W.M.P (MD)Nos.3321 & 3322 of 2020

R.Muthukumar

... Petitioner

Vs.

1.The Delimitation Commission Chairman,
The Tamil Nadu State Election Commissioner,
Jawaharlal Nehru Road,
Koiambedu,
Chennai - 600 106.

2.The District Delimitation Authority,
District Collector,
Office of the District Collector,
Madurai District.

3.The Commissioner,
Thirumangalam Municipality,
Thirumangalam,
Madurai District.

... 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 voter list of Ward Nos.1 to 27 of Thirumangalam Municipality, Madurai District, issued by the third respondent and quash the same as illegal and further, direct the third respondent to re-alter the Ward List based on the petitioner's representation, dated 22.01.2020.

For Petitioner : Mr.T.Vadivelan

For Respondents: Mr.D.Shanmuga Raja Sethupathi
Standing Counsel for R.1

Mr.J.Gunaseelan Muthiah
Additional Government Pleader for R.2

Mr.A.Kannan
Standing Counsel for R.3



ORDER

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

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The above writ petition has been filed by the petitioner as a Public Interest Litigation to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the voter list of Ward Nos.1 to 27 of Thirumangalam Municipality, Madurai District, issued by the third respondent and quash the same as illegal and further, direct the third respondent to re-alter the Ward List based on the petitioner's representation, dated 22.01.2020.

2. According to the petitioner, he is a resident of Jawahar Nagar, Thirumangalam Taluk, Madurai District and it comes within the jurisdiction of Thirumangalam Municipality, Madurai District, which consists of 27 Wards as on 01.11.2019. When the Thirumangalam Municipality had displayed a Draft of Delimitation of Wards, the petitioner made an objection before the Commissioner of Thirumangalam Municipality regarding the alteration of boundaries in the Wards of Thirumangalam Municipality. Thereafter, the State Government enacted the Tamilnadu Delimitation Commission Act, 2017 and the object of the said Act is to provide for the constitution of Delimitation Commission for Delimitation of territorial wards of Village Panchayats Unions, District Panchayats, Town Panchayats, Municipalities and Municipal Corporation and for matters connected there with or incidental thereto. According to the petitioner, in the reconstructed Wards, the voters in the same family are split into different Wards and in some of the Wards, the names of dead persons were not removed in the voters list and there are double entries also found in the newly modified voters list in the same Ward.

3. Further, it is stated that though he submitted his objection to the respondents herein in person, the third respondent who is also a Member of Delimitation Commission, did not take any steps to vindicate his grievance. Thereafter, the petitioner sent a detailed representation to the respondents on 22.01.2020 seeking to make alteration in the Wards in Thirumangalam Municipality, Madurai District. Despite the same, the respondents did not take any action in that regard and hence, the petitioner has come forward with the present writ petition.

4. Heard the learned Counsel for the petitioner, the learned Standing Counsel for the first respondent, the learned Additional Government Pleader appearing for the second respondent and the learned Standing Counsel for the third respondent and perused the materials available on record.

5. The learned Standing Counsel for the first respondent



submitted that the present writ petition questioning the delimitation is not maintainable in view of Article 243-O of the Constitution of India. In support of his contention, the learned Standing Counsel for the first respondent 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

summed up briefly as follows :-



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(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."

(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 Manaparai 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."

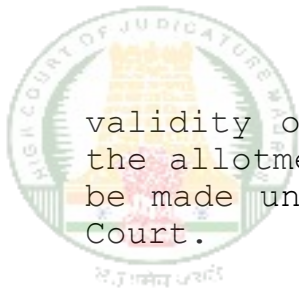
(iii) In an unreported judgment in **D.Vijayakumar v. The Election Commissioner, Tamil Nadu State Election Commission, 208/2, Jawaharlal Nehru Road, Arumbakkam, Chennai - 600 105 and others** [W.P.No.20081 of 2019, decided on 29.07.2019], the Division Bench of this Court relying upon the judgment in **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 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.

(iv) In the case of **N.Pannerselvam v. The Secretary to Government, Rural Development and Panchayat Raj Department, Secretariat, Fort St. George, Chennai - 600 009 and others** [W.P(MD) No.25900 of 2019, decided on 05.12.2019], the Division Bench of this Court, following the judgments of the Honourable Supreme Court dismissed the writ petition with regard to delimitation.

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 243K, shall not be called in question in any Court.

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 publishing the impugned voters list, the petitioner cannot now question the same. Therefore, we cannot be called upon to exercise our writ jurisdiction to interfere with the impugned voters list which has been published after a delimitation exercise that has been conducted. The delimitation exercise has been undertaken taking note of the population in the said area.

8. 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 Standing Counsel for the first respondent squarely applies to the present case and we do not find any merit in this writ petition.

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

Sd/-
ASSISTANT REGISTRAR()

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/ /2020
SUB ASSISTANT REGISTRAR(CS)

Rsb

To

1.The Delimitation Commission Chairman,
The Tamil Nadu State Election Commissioner,
Jawaharlal Nehru Road,
Koiambedu,
Chennai - 600 106.

2.The District Delimitation Authority,
District Collector,
Office of the District Collector,
Madurai District.



3.The Commissioner,
Thirumangalam Municipality,
Thirumangalam,
Madurai District.

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+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-8875[F] dated 27/02/2020)

+1 CC to M/s.A.KANNAN, Advocate (SR-9022[F] dated 27/02/2020)

+1 CC to M/s.SPL.GP (SR-9104[F] dated 28/02/2020)

+1 CC to M/s.SPL.GP (SR-9116[F] dated 28/02/2020)

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MKB(16.03.2020)/9P/8C