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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.843 of 2022

1. J.Mohamed Anasu
2. A.Mohamed Younus

.. Petitioners

vs

1. Tamil Nadu State Election Commission
rep. by its State Election Commissioner
No.208/2, Jawaharlal Nehru Road
Opp to CMBT, Arumbakkam
Chennai - 600 106.
2. The District Delimitation Authority
Collector, Villupuram District
Villupuram.
3. The Commissioner
Kottakuppam Municipality
Kottakuppam, Villupuram.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution seeking issuance of a writ of declaration, declaring that the Draft Ward Delimitation Report dated 17.12.2021 of the 3rd respondent, the order of the 3rd respondent dated 13.01.2022 bearing Na.Ka.No.A1/ 109/2017 in so far as holding that the lodges/resorts in the Ward No. 1, 2, 3 and 7 were not taken into account while arriving at the number of houses in the ward and the action of the 3rd respondent in releasing the voters list on 10.01.2022 in respect of the 27 wards of the Kottakuppam Municipality as illegal, arbitrary and contrary to law and consequently direct the respondents to prepare the Ward Delimitation Report in terms of Section 4(1)(a) and (b) of the Tamil Nadu Delimitation Commission Act, 2017 and Rules 6 and 8 of the Tamil Nadu Local Bodies Delimitation Regulation, 2017 and thereafter publish the Electoral List and conduct election for the 3rd respondent Municipality.



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For the Petitioners : Mr.Balan Haridas

For the Respondents : Mr.S.Shivashanmugam
for 1st respondent

: Mr.P.Muthukumar
State Government Pleader
for respondents 2 and 3

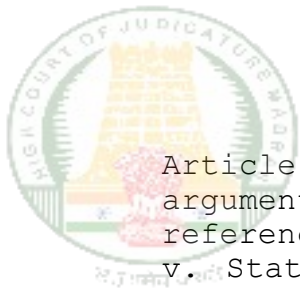
ORDER

(Order of the court was made by
the Hon'ble Acting Chief Justice)

By this writ petition a challenge is made to the Draft Ward Delimitation Report dated 17.12.2021 and the order passed thereupon by the third respondent on 13.1.2022.

2. It is a case where the respondents published the draft proposal for delimitation of wards in reference to Kottakuppam Municipality in the newspapers on 17.12.2021, which was also affixed on the notice board, inviting objections from political parties and general public by 31.12.2021. Pursuant to it, the petitioners submitted their objections. According to learned counsel for the petitioners, the objections against the draft proposal for delimitation of wards were not only in reference to the voters' list, but even in regard to the boundaries of the wards for delimitation. However, the respondents, without considering the said objections and providing an opportunity of personal hearing, finalised the delimitation and published the gazette notification on 31.12.2021 itself. It is alleged that the procedure adopted by the respondents in publication of the gazette notification is a far cry from the procedure contemplated under the Tamil Nadu Delimitation Commission Act, 2017 and Tamil Nadu Local Bodies Delimitation Regulations, 2017.

3. Referring to Regulation 8(e), (f) and (i) of the Regulations of 2017, learned counsel for the petitioners submits that, despite a statutory prescription, the petitioners were not given an opportunity of personal hearing and were heard along with others who raised objections/gave suggestions. The respondents have not communicated the decision taken on the objections given by the petitioners, either for acceptance or rejection, and in view of the above, Regulation 8(e), (f) and (i) of the Regulations of 2017 have been violated. In the absence of an opportunity of personal hearing, the fundamental principles of natural justice have been violated offending



Article 14 of the Constitution of India. To buttress the said argument, learned counsel for the petitioners has made a reference to a judgment of the Apex Court in Dr. Rash Lal Yadav v. State of Bihar and others, (1994) 5 SCC 267. Referring to paragraph (6) of the said judgment, he submits that the concept of natural justice is not a static one, but is an expanding concept and, therefore, needs to be complied. The respondents have violated it and, therefore, the aforesaid is an additional reason to set aside the notification.

4. Learned counsel for the petitioners submits that, in view of the above, the draft ward delimitation report dated 17.12.2021 and the subsequent order dated 13.1.2022 deserve to be set aside with a direction to the respondents to provide an opportunity of hearing to the petitioners; and, thereafter, to communicate to the petitioners the reasons for acceptance or rejection of the objections.

5. Learned counsel for the respondents have contested the writ petition. A preliminary objection to the maintainability of the writ petition has been raised in reference to Article 243-ZG of the Constitution of India. It is submitted that the issue of delimitation cannot be taken up before the court, but despite the bar under the Constitution, a writ petition has been filed to challenge the notification of delimitation. It is further submitted that once the process of election has started with the notification issued by the State Election Commission, the Court should not cause interference.

6. Referring to the facts of the case, learned counsel for the respondents has drawn out attention to paragraph (6) of the counter to state that strict compliance of Regulation 8 of the Regulations of 2017 had been made. It is submitted that after receipt of the objections from the petitioners, apart from others, the respondents arranged for a meeting on 23rd/24th December, 2021. The objections raised were considered by the District Collector in the presence of the petitioners and others and after hearing them. Finding substance, 11 suggestions were accepted, while rejecting 18 objections, including that of the petitioners. Thus, action was taken strictly in compliance of Regulation 8 of the Regulations of 2017, referred by the petitioners.

7. The petitioners did not otherwise raise the issue of boundaries of the wards to challenge the draft ward delimitation report, yet all the persons who raised objections or gave suggestions were heard by the District Collector. Therefore, Regulation 8(i) of the Regulations of 2017 has no application to the facts of the case, yet compliance of it was made. It is,



therefore, submitted that the Regulations of 2017 have not been violated by the respondents.

8. Apropos the plea of communication of a copy of the order to each person on hearing the objection raised by him, it is submitted that there is no provision which mandates communication of the decision to each individual who raised objection and, therefore, it cannot be said to be a case of non-compliance of the Regulations of 2017. The respondents, accordingly, prayed for dismissal of the writ petition even on facts.

9. We have considered the rival submissions of the parties and scanned the matter carefully.

10. The facts which are not in dispute are the publication of the draft proposal of delimitation of wards in the newspaper on 17.12.2021 and affixation in notice board on 17.12.2021, calling for objections from political parties and general public by 31.12.2021. It is also a fact that the petitioners along with others raised objections/gave suggestions to the draft proposal for delimitation of wards. Copies of the representations made by the petitioners raising objections have been enclosed along with the writ petition. Pursuant to the objections raised by the petitioners and others, consideration was made with a final decision taken thereupon, as narrated by the respondents in paragraph (6) of the counter. The only issue raised by learned counsel for the petitioners is about denial of personal hearing despite being mandatory under Regulation 8(i) of the Regulations of 2017. Reference of Regulations 8(e) and (f) of the Regulations of 2017 has also been made and for ready reference the provisions aforesaid are quoted hereunder:

"8. Process of Delimitation.-The number of wards as they exist on the date of commencement of the Act shall be maintained and the delimitation shall be done based on the increased population as ascertained in the last preceding census providing parity in representation in all the wards within the respective local body. For the purpose of delimitation of territorial wards of Local Bodies, the following factors shall be taken into account namely:-

(a) to (d) ...

(e) Objections or suggestions on the draft delimitation order shall be given to the appropriate authority in person or by registered post. If any document is intended to be produced



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along with the above, self attested copies of such documents shall also be given and such documents shall not be returned.

(f) All the objections or suggestions received shall be numbered and each objections or suggestions shall be enquired into by the officers appointed for the said purpose and the findings shall be recorded.

...

(i) Upon the receipt of any objection or suggestion regarding the fixing of boundary of wards, the Commission or the designated authority shall verify the objection or suggestion by conducting a hearing in person after collecting the information from the Local Body concerned ."

11. A perusal of Regulation 8(e) and (f) of the Regulations of 2017 does not show a prescription for personal hearing on a representation received raising objections or giving suggestions to the draft proposal of delimitation of wards. Under Regulation 8(i) of the Regulations of 2017, a personal hearing is provided when objection is raised or suggestion is made regarding fixing of the boundaries of the ward. To find out whether Rule 8(i) of the Regulations of 2017 is applicable to the facts of the case, we have gone through the representations made by the petitioners and find no objection to the boundaries of wards was raised, so as to give an opportunity of personal hearing to the petitioners. In any case, it is a fact that petitioners appeared before the District Collector along with others for personal hearing. Therefore, even though Rule 8(i) of the Regulations of 2017 is not applicable to the facts of the case, the petitioners were given personal hearing along with others by the District Collector concerned. After hearing the objections/ suggestions, the District Collector accepted 11 suggestions and rejected 18 objections. It is not in dispute that the decision therein was not communicated to the petitioners. Therefore, learned counsel for the petitioners has raised an issue on that ground.

12. Going through the framework of the statute and the Regulations framed thereunder, we do not find any provision mandating communication of the decision taken upon consideration of the objections/suggestions. It is trite that law of elections, being a technical law, has to be interpreted strictly. Unless a provision exists, the non-communication of the reasons cannot be held to be illegal. Therefore, on facts, we do not find any violation of Regulations 8(e), (f) and (i) of the Regulations of 2017 and the issue has been otherwise examined even as per the framework of the statute and the Regulations framed thereunder.



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13. Since we are not convinced on merits, we are not going into the objection raised by the respondents regarding maintainability of the writ petition in the fact situation given by them. However, we would deal with the judgment cited by learned counsel for the petitioners in support of his argument.

14. In *Dr. Rash Lal Yadav v. State of Bihar and others*, supra, the Apex Court has laid down the law in regard to adherence of the principles of natural justice. Before going further on the issue, we have to make it clear that the election law, being technical in nature, the provisions for its adherence have to be taken in strict sense. In view of the above, a general proposition cannot be laid down if it is not contemplated under the statute or the Regulations framed thereunder. Moreover, as held in the preceding paragraphs, the principles of natural justice has not been violated in this case. The petitioners were given an opportunity of hearing along with others and they were present before the District Collector. Thus, even the allegation of violation of principles of natural justice is not made out in this case. That apart, there is no provision contemplating communication of a copy of the decision taken by the authority. We, therefore, do not find it to be a case of violation of the principles of natural justice.

For the foregoing reasons, the writ petition is dismissed as devoid of merits, however, keeping the issue about maintainability of the writ petition open. There will be no order as to costs. Consequently, W.M.P.Nos.923 and 925 of 2022 are closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To:

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



2. The District Delimitation Authority
Collector, Villupuram District
Villupuram.

3. The Commissioner
Kottakuppam Municipality
Kottakuppam, Villupuram.

+lcc to Mr.Balan Haridas, Advocate, S.R.No.7627

W.P.No.843 of 2022

NRL[co]
NSK 14/02/2022