



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.19308 of 2021
and W.M.P Nos.20618 & 20619 of 2021

P.Baskar

Petitioner

VS.

1.Government of Tamil Nadu
Represented by its Secretary,
Rural Development & Panchayat Rat,
Fort St. George, Chennai – 9.

2.Government of Tamil Nadu,
Represented by its Directorate of Rural Development,
& Panchayat Raj Department,
Panagal Building, Chennai -15.

3.The District Collector,
Kanchipuram District.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in G.O.Ms.No.106, Rural Development and Panchayat Raj (PR-1) Department, dated 03.9.2021, in so far as it relates to allotment of Kolathur Panchayat President post of 'ST General' and to quash the same and consequently direct the respondents to allot the Kolathur Village Panchayat President post to the other eligible reserved category.



For Petitioner : Mr.J.Srinivasa Mohan
For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

This writ petition has been filed challenging G.O.(Ms).No.108 (wrongly mentioned as G.O.(Ms).No.106), Rural Development and Panchayat Raj (PR-1), dated 03.09.2021, insofar as it relates to the allotment of Kolathur Panchayat President post to ST General and for a consequential direction to the respondents to allot the post of President in the said panchayat to the other eligible reserved category.

2.When the writ petition came up for hearing on 15.09.2021, this Court after considering the stand taken by the respondents in the counter affidavit passed the following order after hearing both sides:

Mr.A.Selvendiran, learned Government Counsel takes notice on behalf of the respondents.

2.This writ petition has been filed challenging the Government Order issued by the 1st respondent dated 03.09.2021, insofar it relates to the allotment of the post of Panchayat President to “ST General”.

3.The main ground of challenge is that the 1st respondent has



mechanically issued the Government Order in total disregard to the report submitted by the Committee that was appointed by the 2nd and 3rd respondents and the earlier orders passed by this Court in W.P.No.17959 of 2019, dated 08.11.2019. According to the petitioner, the total population of the Scheduled Caste and Scheduled Tribe was shown as 1027 and 270 respectively based on the 2011 Census. Thereafter, a representation was made by the petitioner on 14.07.2016 to the 2nd respondent by pointing out that the population of the persons belonging to SC and ST community is wrongly reflected in the Census and the same requires to be corrected. Based on the representation made by the petitioner, the 1st respondent through proceedings dated 19.07.2016 directed the 3rd respondent to conduct an enquiry and submit a report. Accordingly, a Committee came to be appointed and the Committee submitted a report to the effect that the total population of the persons belonging to ST community is 70 out of which the total voters are 59. Based on this report given by the Committee, the petitioner made a representation dated 04.08.2016 to the 1st respondent to take note of the report and to make necessary changes.

4. Thereafter, a notification came to be issued by the 1st respondent in G.O.Ms.No.209, dated 16.09.2016. Even in the said Notification, the Kolathur Panchayat was once again reserved for ST General.

5. The petitioner filed a writ petition in W.P.No.17959 of 2019 before this Court for a direction to the respondents to take into consideration the report of the Committee dated 29.07.2016 before



finalizing the reservation for the Kolathur Panchayat President post.

This Court disposed of the writ petition by an order dated 08.11.2019. The relevant portions in the order are extracted hereunder:

5. In the counter, the third respondent has stated that as per 2011 census, the Kolathur Panchayat have more ST population comparing to the other 58 panchayats in the Kancheepuram District. In the counter, the third respondent has also extracted the population statistics of the Districts. Regarding the report dated 29.07.2016, the third respondent is sceptical about the report and state that the respondents are intended to follow the census of 2011, and not the date given in the report.

6. The said stand of the third respondent goes contrary to observation of this Court in Dravida Munnertra Kazhagam, represented by its Organisation Secretary, R.S.Bharathi vs. The Secretary to Government, Rural Development and Panchayat Raj Department, Government of Tamil Nadu, Secretariate, Fort St. George, Chennai reported in (2016) 7 MLJ 772 confirmed by the Division Bench of this Court in W.A. No.1268 of 2016 vide order dated 01.08.2017.

7. There is a specific direction of this Court to make proper enquiry regarding the limitation and da-



limitation of the constituency, based on the voters. Pursuant to the order, enquiry was conducted and the enquiry report indicates that there are only 59 ST voters in the Kolathur village Panchayat. Therefore, the third respondent cannot go back to 2011 census and so that there are 203 voters in the said constituency reserve the said constituency for ST voters.

8. In view of the above, the third respondent is directed to consider the Enquiry Committee report dated 29.07.2016 and if necessary, shall make a fresh assessment and then take a decision on reserving the constituency as per the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995.

6. Pursuant to the above order, the District Collector through letter dated 16.12.2019 informed the 2nd respondent about the order passed by this Court and the steps to be taken to carry out the necessary corrections and to determine with regard to the reservation to the post of Panchayat President. The petitioner also made a detailed representation in this regard to the 2nd respondent on 04.03.2020. A legal notice was also issued in this regard on 13.08.2021.

7. The 1st respondent has now issued G.O.Ms.No.106, dated 03.09.2021. Even while issuing this Government Order, the reservation insofar as the Kolathur Village Panchayat is concerned is



earmarked for ST General. Aggrieved by the same, the present writ petition has been filed before this Court.

8.The learned Advocate General appearing on behalf of the respondents submitted that the respondent will have to necessarily take into consideration the Census data of the year 2011 and that will be the determining factor for considering the reservations in various panchayats. The learned Advocate General also brought to the notice of this Court the fact that a public interest litigation in W.P No.19666 of 2021 was filed and the same came up for hearing before the Hon'ble First Bench and the subject matter of challenge was G.O.Ms.No.106, dated 03.09.2021. The learned Advocate General submitted that Hon'ble First Bench refused to stay the Government Order on the ground that such stay cannot be granted after the issuance of the election notification. The learned Advocate General also brought to the notice of this Court the proceedings of the District Collector dated 07.09.2021 rejecting the representation made by the petitioner on 09.08.2021. The learned Advocate General therefore, submitted that the respondents will file a counter and there is absolutely no ground to grant any interim order in the present case.

9.The earlier order passed by this Court in W.P.No.17959 of 2019 had dealt with the counter affidavit filed by the 3rd respondent wherein, the same stand was taken to the effect that 2011 Census was taken into consideration to determine the reservation for the Kolathur Panchayat. Curiously, the counter that was filed in this writ petition has been cut and pasted in the order passed by the District



Collector through proceedings dated 07.09.2021. Each word that is found in the order reflects the stand taken by the 3rd respondent in the counter filed in the earlier writ petition. Therefore, the order passed by the 3rd respondent dated 07.09.2021 does not carry any weight.

10. In the present writ petition, this Court is concerned about the specific stand taken by the petitioner to the effect that the total ST population in the panchayat is only 70 out of which there are 59 voters falling under this category. This stand is based on the report submitted by the Committee appointed by the 2nd and 3rd respondents. This report was taken into consideration by this Court when the earlier order was passed on 08.11.2019 and this Court categorically held that the 3rd respondent cannot go back to the 2011 Census and a fresh assessment shall be made taking into consideration the report of the Committee dated 29.07.2016. This direction given by this Court has not been complied with by the respondents. The respondents seem to be taking the very stand by relying upon 2011 Census which has already been rejected by this Court and the order has become final.

11. The 3rd respondent has filed a counter affidavit along with typed set of papers. In the typed set of papers, the entire list of persons belonging to ST community has been provided. A careful perusal of the list shows that there are only 88 persons who have a community certificate issued to them to substantiate that they belong to the ST community. That apart there are six persons who do not possess a community certificate but they are only relying upon the Transfer Certificate issued by the educational institution. Even if



these persons are added, the list that has been submitted by the 3rd respondent shows that there are only 94 persons who can be recognized to belong to the ST community. Therefore, the very list that has been produced by the respondents goes contrary to the figure that is shown in the 2011 Census.

12.The learned Advocate General brought to the notice of this Court the judgment of the Division Bench in W.P.(MD) Nos.20690 etc. 2019 and submitted that the Division Bench had refused to entertain the writ petition and therefore, the present writ petition is also not maintainable.

13.In the considered view of this Court, the judgment of the Division Bench will not apply to the facts of the present case. The facts of the present case are peculiar and it has to be determined based on the report submitted by the Committee and the earlier order passed by this Court. The respondents not having complied with the specific directions issued by this Court, cannot be permitted to stick on to the very same stand and reiterate the same in the Government Order.

14.A prima facie case has been made out and there shall be a stay of G.O.Ms.No.106, Rural Development and Panchayat Raj (PR-1) Department, dated 03.09.2021 insofar it relates to allotment of Kolathur Panchayat President post to ST General, pending disposal of this writ petition.



3.The above order was taken on appeal before the Division Bench in W.A.No.2457 of 2021 and the Division Bench of this Court by an order dated 24.09.2021 dismissed the writ appeal and confirmed the above order.

4.Heard Mr.J.Srinivasan Mohan, learned counsel appearing on behalf of the petitioner and Mrs.S.Mythreye Chandru, learned Special Government Pleader appearing on behalf of the respondents.

5.The 2nd respondent has filed an additional counter affidavit on 28.02.2023. The stand taken in the additional counter affidavit is extracted hereunder:

11. It is submitted that the details specified in the table provided in para No. 9 above would clearly show that only one seat has been reserved in favour of Scheduled Tribes in Sriperumbudur Panchayat Union. Since the Rural Local Body Election has already been conducted in the remaining 57 village panchayats of Sriperumbudur Panchayat Union. Since the successful candidates have also been assumed offices, the reservation made in favour of Scheduled Tribe cannot be allocated to any other Village panchayat in Sriperumbudur Panchayat Union.

12. It is submitted that as per the Tamil Nadu Panchayat (Reservation of Seats with rotation of reserved seats) Rules, 1995 the allocation of reserved seats with respect to a particular village



panchayat has to be made, based on the population as provided in the latest census data, i.e. Census 2011. While this be the case, the petitioner seeks to allocate the reserved seats with respect to Kolathur Village Panchayat, based on the number of voters and not on population, which is not in compliance with the said Act and Rules.

13. It is submitted that the said exercise of allocation of reserved seats based on the number of voters cannot be implemented at this stage, since the election with respect to the remaining 57 village panchayats of Sriperumbudur Panchayat Union has already been conducted based on the data provided in the 2011 census.

14. It is submitted that in terms with the aforesaid provisions of law, reservation of seats and the and the election thereof are to be carried out based on the population. It is submitted that in case the petitioner's request to allocate the reserved seats based on the number of voters in Kolathur village panchayat is to be entertained, then the number of voters belonging to the Scheduled Caste and Scheduled Tribe in all of the village panchayats will have to be taken into account and thereafter the reservation of seats needs to be carried out. In the present case, since the allocation of reserved seats has already been done, based on the population with respect to the said 57 village panchayats of Sriperumbudur Panchayat Union, the request of the petitioner to apply the yardstick of number of voters instead of the population in Kolathur village panchayat alone cannot be accepted at the present stage.



15. Further, it is submitted that since only one seat has been allocated in favour of Schedule Tribe and it is only Kolathur village panchayat, for which election is yet to be conducted, the said reservation to Scheduled Tribe cannot be allocated to any other village panchayat in Sriperumbuthur panchayat union at present.

16. It is submitted that since the above provisions clearly state that the reservation of seats is to be done only based on the population and not on the basis of the number of voters, the reservation of seats is done throughout the State of Tamilnadu only based on the population as provided in the 2011 census.

17. It is submitted that adopting different yardsticks for different village panchayats, will have grave consequences in terms of reservation of seats. If the reservation of seats is to be done based on the number of voters, the same yardstick is to be adopted for the entire State. If the population is to be taken into account for reservation of seats, then the same yardstick is to be adopted for the entire State. Since the aforesaid provision in law contemplates population (and not votes), reservation is made through out the State of Tamil Nadu based on the data of Census of India 2011. Now making an exception to Kolathur village panchayat alone would will have grave consequences.

6. On carefully going through the additional counter affidavit, it is seen that the 3rd respondent has virtually reiterated the earlier stand by relying upon 2011 census which has been rejected by this Court. Apart from the same, since the local



body election has already been conducted for the remaining 57 village panchayats, the 3rd respondent has taken a stand that the reservation made in favour of Scheduled Tribe for the Kolathur panchayat cannot be allotted to any other panchayat in Sriperumpudur Panchayat Union.

7.The learned counsel for the petitioner submitted that since the election was not conducted for the post of Panchayat President, the panchayat is now being run by a Vice-President and steps must be taken to immediately comply with the earlier direction passed by this Court and fresh election must be conducted for the post of Village Panchayat President.

8.In the earlier order passed by this Court on 15.09.2021, this Court had taken into account the order passed in W.P.No.17959 of 2019, dated 08.11.2019. In the said order, a specific direction was given to the 3rd respondent to consider the report of the Enquiry Committee, dated 29.07.2016 and if necessary to make a fresh assessment and then take a decision on reserving the constituency as per the 1995 Rules. In the earlier counter affidavit filed along with typed set of papers, this Court found that there are only 88 persons, who have been issued the Community Certificate to substantiate that they belong to ST community. That apart, six other persons were also brought within this category based on the



Court found that even according to the 3rd respondent, only 94 persons were recognized to belong to the ST community. In such view of the matter, the 3rd respondent was attempting to justify the continuation of the reservation to the post of Panchayat President to ST General by placing reliance upon the 2011 census. In view of the same, this Court had to necessarily stay the election and the stay continues.

9.The stand taken by the 3rd respondent in the counter affidavit and the additional counter affidavit filed by the 2nd respondent by placing reliance upon the 2011 census to justify the reservation, has to be rejected. The respondents will have to necessarily go by the report submitted by the Committee. If the respondents find any difficulty in going ahead with the Enquiry Committee report, dated 29.07.2016, they should atleast take steps to make a fresh assessment and then take a decision on reserving the constituency as per the 1995 Rules. This is the appropriate time for the respondents to carryout this exercise.

10.In the result, the impugned Government Order in G.O.(Ms).No.108, Rural Development and Panchayat Raj (PR-1), dated 03.11.2021, insofar as it relates to the allotment of the Kolathur Panchayat President post to ST General, is hereby quashed. There shall be a direction to the respondents to act on the Enquiry Committee Report, dated 29.07.2016 and take a decision on reserving the



constituency. If in case, the respondents have any reservations on the report submitted by the Enquiry Committee, they shall make a fresh assessment and then take a decision on reserving the constituency as per the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995. This exercise shall be completed by the respondents, within a period of three months from the date of receipt of copy of this order. Immediately after the completion of the said exercise, the constituency shall be brought within the appropriate reservation category and election shall be held for the post of President of the Kolathur Panchayat. The panchayat cannot be continuously run by the Vice-President on a temporary basis and panchayat has to necessarily have a President. Hence, the respondents are expected to stick on to the time lines. In order to create a level playing field, the Kolathur Panchayat shall come within the direct supervision of the District Collector, Kancheepuram District, till the elections are held.

11. This writ petition is accordingly allowed with the above directions. No Costs. Consequently, connected miscellaneous petitions are closed.

11.04.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr



1. The Secretary,
Rural Development & Panchayat Raj,
Fort St. George, Chennai – 9.
2. The Directorate of Rural Development,
& Panchayat Raj Department,
Panagal Building, Chennai -15.
3. The District Collector,
Kanchipuram District.



WEB COPY



16

N. ANAND VENKATESH, J.

SSR

W.P No.19308 of 2021
and W.M.P Nos.20618 & 20619 of 2021

11.04.2023