

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

L.A. No. _____ of 2019

In

M.A. No 2328 of 2019

In

Writ Petition(C) No. 1267 of 2018

IN THE MATTER OF:

C. R. Jayasukin

... PETITIONER

Versus

The Tamil Nadu State Election Commission

Ac Anr.

... RESPONDENTS

AND IN THE MATTER OF:

Dravida Munnetra Kazhagam

... APPLICANT

LA No. _____ of 2019

An application for issue of directions

PAPER - BOOK

(Kindly see inside for Index)

Advocate for the Applicant: Amit Anand Tiwari

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Anr., proceeded to direct as under:

List on 13.12.2019, by which time we hope and expect that Notification will be issued after completing all legal formalities. Dr. Abhishek Manu Singhvi, learned Senior Counsel states that there are some connected matters, i.e., SLP(C)Nos.28881-28883/2016 and batch.

List all the connected matters together before the appropriate Bench, after obtaining orders from Hon'ble the Chief Justice of India.

3. That it is most humbly submitted here that the applicant herein, has already filed an application for issue of appropriate direction to the Respondent Commission, to complete all legal formalities including the exercise of delimitation, prior to issuing any notification for local bodies election. However, in complete disregard to the orders of this Hon'ble Court dated 18.11.2019, the Respondent Commission proceeded to issue the notification for the rural local bodies on 02.12.2019, without carrying out the exercise of delimitation.

A copy of the election notification dated 02.12.2019 released by the Tamil Nadu State Election Commission is being annexed hereto and is being marked as ANNEXURE A/1.

4. It is most humbly submitted here that vide various government orders dated 12.11.2019, the State of Tamil Nadu has formed nine new districts in the State. It is most humbly submitted here that for these districts, no elections can be held since, there has been no formation and incorporation of District Panchayats in accordance with Section 24 of the Tamil Nadu Panchayats Act. It is most humbly submitted in this regard that this is in

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violation with Article 243B (1) as the same states that *there shall be constituted in every State, Panchayats at Village, intermediate and district levels in accordance with the provisions of this part.*

5. This implies that the three-tier system should be simultaneously constituted. It is most humbly submitted here that under Section 24 of the Panchayats Act, there must be one district panchayat council for each revenue district. However, as per the impugned notification, the total number of District Panchayat councils has been mentioned to be 31, i.e. the number of districts which were in existence prior to bifurcation/trifurcation vide Government Orders dated 12.11.2019 have been taken into account.
6. It may be noted here that Vellore District has been bifurcated into three districts now, however, for all these districts, there is only one District Panchayat council. This practice is on the face of it perverse, since, for every district, there are already different appointments to the post of District Collector, Superintendents of Police and District Revenue Officers. In totality, for the nine newly formed districts, there should be, as has been mandated by the Statute, 9 independent District Panchayats Councils, however, the same has not been done. Therefore, the notification deserves to be set aside.
7. Further, the absurdity in the notification rendering it unworkable is evident from the fact that the notification has given a date for indirect election of chairperson and vice

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chairperson as 11.01.2020, however, it has not notified election of District Panchayat Ward Member, who would vote for chairperson and vice chairperson of the district panchayat. Further, a reading of notification would show that the kind of ballot paper to be used and the candidate deposit etc for the DPWM is given, but the entire election schedule for District Panchayat Ward member is missing.

8. It is most humbly submitted here that the said notification dated 02.12.2019 also deserves to be quashed on the ground that it has been issued contrary to the direction issued by this Hon'ble Court in M.A No. 2328 of 2019 dated 18.11.2019 asking the Respondent Commission to complete all the legal formalities before issuing the notification. It is most humbly submitted here that the delimitation exercise for the nine newly formed district has not been carried out.
9. It may not be out of place to mention here that the Appellant herein, made a representation to the Tamil Nadu State Election Commission and other concerned authorities that since the issue, i.e. whether delimitation exercise has to be carried out, prior to issuing any election notification is Subjudice before this Hon'ble Court, therefore, until the issue is decided by this Hon'ble Court, no notification for local body election should be issued. The Commission, however, in complete haste, proceeded to issue the instant notification dated 02.12.2019,

merely to portray that they are willing to conduct the local body election in the State of Tamil Nadu.

10. It is pertinent to point out here that the instant notification also deserves to be set aside, since the same is likely to hamper the mandate of a free and fair election. It is most humbly submitted here that conduct on an election, when admittedly, the basic legal requirements of issuing an election notification itself have not been complied with, is on the face of it illegal and cannot allowed to be given effect. It may also be noted here that in Rural Local bodies election, voters cast four votes. i.e. one vote for ward member of village panchayat, one vote for the president of the village panchayat, one vote for the member of panchayat union and one vote for the member of district panchayat.

11. Further, it is most humbly submitted here that for all these posts, 50% of the total seats are reserved for women, in the State of Tamil Nadu. It is to note here that the Respondents are to carry out a) The delimitation of wards of all local bodies, b) Reservation of office of chairman or mayor in a town, panchayat, municipality or corporation. C) Rotation policy. None of these exercises have been carried out before issuing the notification for local bodies election dated 02.12.2019 and on this ground also, the notification deserves to be quashed.

12. It is also submitted here that the notification of the Respondent Commission dated 02.12.2019 has been issued in haste and if

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local body elections are allowed to be held on the same, the same is likely to lead to chaos. It is pertinent to note here that the Respondents herein are merely attempting to portray that they are willing to conduct the local body elections, however, the same is being done by bypassing mandatory legal requirements and therefore, the notification dated 02.12.2019 deserves to be set aside.

13. It is pertinent to point out here that vide multiple government orders dated 12.11.2019, the Government of Tamil Nadu formed nine new districts in the State. It would be relevant to note here that for these nine new districts, admittedly, no exercise has been carried out.

14. It is most humbly submitted here that vide various government orders dated 12.11.2019, the State of Tamil Nadu has formed nine new districts in the State. It is most humbly submitted here that for these districts, no elections can be held since, there has been no formation and incorporation of District Panchayats in accordance with Section 24 of the Tamil Nadu Panchayats Act. It is most humbly submitted in this regard that this is in violation with Article 243B (1) as the same states that *there shall be constituted in every State, Panchayats at Village, intermediate and district levels in accordance with the provisions of this part.*

15. It is pertinent to point out here that the government of Tamil Nadu, while issuing various government Orders which

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bifurcated/trifurcated various district into smaller districts, in
 Para 7 has proceeded to direct/hold as under:

7. The delimitation of territorial wards of village panchayats, Panchayat Unions and District Panchayats have already been notified under the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act of 1994) and thereby the delimitation exercise for ensuing local body elections has already been completed. Notwithstanding the notification to bifurcate the districts, the process started already to conduct the ensuing local body elections will be continued as per the order of the Hon'ble Supreme Court dated 17.07.2019 in W.P (Civil) No. 1267/2018. After the ensuing local body elections, the process of modification if any, with regard to local bodies will be taken up by the Government.

16. It is most humbly submitted here that the process of delimitation, can only be done in the manner as has been prescribed in the Tamil Nadu Delimitation Commission Act, 2017 (hereinafter referred as Act of 2017) and the Tamil Nadu Local Bodies Delimitation Regulations, 2017 (hereinafter referred as the Regulations of 2017). However, in the instant case, the government of Tamil Nadu has proceeded to take up the role of the Delimitation Authority which is impermissible in law.

17. It is most humbly submitted here that the said action of the Government, to take up the powers of an expert body, is completely unknown to law. In this regard, it may be noted here that the rural local bodies election is a three-tier system. The Respondent Commission is proceeding to conduct election for the rural local bodies, although the District Delimitation

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authorities have not been constituted for the newly formed district and therefore, the mandatory legal requirement under the Constitution of India, The Delimitation Regulations, 2017 and the Delimitation Act, 2017 have not been complied with by the Respondent Commission and the impugned notification dated 02.12.2019 deserves to be quashed.

18. That the Respondent No. 1 proceeded to release the notification for election of the rural local bodies vide its notification dated 02.12.2019. It is pertinent to point out here that the said notification has been issued by the Respondent, without carrying out all the legal formalities, as had been directed by this Hon'ble Court vide its order dated 18.11.2019 in M. A. No. 2328 of 2019.

19. That various exercises, as have been elaborated to in detail in Regulation 8 of the Tamil Nadu Local Bodies Delimitation Regulations, 2017 are required to be taken for completing the exercise of delimitation. It is relevant to point out here that these exercises have admittedly not been carried out for all the nine newly formed districts.

20. It is most humbly submitted here that the observations in Para 7 of Government Order dated 12.11.2019 are *idem ad eundem* in all the government orders bifurcating/trifurcating the various district into smaller districts. It is pertinent to point out here that for carrying out the exercise of delimitation, the delimitation

authority in the districts, is the district collector and he is to ensure that the delimitation exercise is carried out, in accordance with the procedure prescribed in the Act and the Regulations.

21. In the instant case, the government has taken over the role of the delimitation authority and has proceeded to ensure the issuance of the local bodies election, despite admittedly, no delimitation exercise having been carried out for the nine newly formed districts. The said action is in teeth with the order of this Hon'ble Court dated 18.11.2019, wherein, it had been specifically directed that all the legal formalities are to be completed, prior to issuance of any election notification.

22. It is pertinent to point out here that the ruling party in the State of Tamil Nadu, as is evident from the preceding paragraphs, has proceeded to issue the notification for the rural local bodies' elections, while ensuring that the delimitation exercise and other legal formalities, as had been directed by this Hon'ble Court vide its order dated 18.11.2019, is not followed.

23. The impugned press release dt. 02.12.2019, the total number of vacancies for District Panchayats is shown as 31, but the total Number of Districts in the State of Tamil Nadu as on date is 37. It is submitted here that the Government's decision to not proceed with delimitation despite the delimitation of 9 districts currently pending, amounts to violation of constitutional

mandate of delimitation, reservation for the SC/ST and the State reservation of women besides usurping the powers of the Delimitation Commission, specifically enacted to carry out Delimitation exercise for all the districts.

24. That it is further being submitted here that under section 8 of Delimitation Act, the government can only issue directions to carry out the purposes of the Act and not otherwise. The directions in paragraph 7 of the orders of bifurcation is not only in violation of section 8 of Delimitation act but the said directions are nullified in view of the order of this Hon'ble court dated 18.11.2019. Therefore, the impugned press release is in violation of the orders of this Hon'ble court dated 18.11.2019.

25. It is pertinent to point out here that the delimitation for the newly formed 9 districts has not even commenced as on date. The delimitation done for the then unified 4 district of Vellore, Kancheepuram, Villupuram and Tirunelveli has no relevance as the mandate of the Delimitation Commission under Section 4(1) of Delimitation Act is to carry out delimitation by dividing the area of every local body in to as many wards as the members are required to be elected to that local body on the basis of the population as ascertained at the last preceding census and to determine the boundaries of the wards in every local body and ensure that the population of each ward in every local body be the same throughout that local body and to make

recommendation to have every territorial wars as far as practicable be geographically compact area and to make reservations.

26. It is to note here that for the 9 New districts no election can be conducted without formation and incorporation of District Panchayat in accordance with section 24. The action of the Respondents is in direct violation of Art 243B(1) which states that *there shall be constituted in every state, Panchayats at Village, intermediate and districts levels in accordance with the provision of this Part*'. In other words, the three-tier system should be simultaneously constituted and the manner in which the formation of District Panchayat Council has been ignored before the impugned press release of the election notification makes the same void and illegal.

27. That it is germane to note here that there cannot be a single District Panchayat Chairman for three districts, when the District Collectors, Superintendents of Police and District Revenue Officers are separately functioning. Similarly, Kancheepuram, Villupuram and Tirunelveli Districts have been bifurcated and formed into six new Districts. In total, there are nine Districts have been newly formed by alteration of the territorial boundaries. But there has been no constitution of District Panchayat Council for the nine new Districts, which ultimately infringes the rights of people and the impugned

notification

28. It is most humbly submitted here that as per Regulation No. 4 of the Tamil Nadu Local Bodies Delimitation Regulations, 2017, the Collector of every Revenue District, except Chennai District, shall be the District Delimitation Authority for the purpose of delimitation of territorial wards of Local Bodies. The Government of Tamil Nadu appointed new District Collectors for the newly formed Districts. That being so, they can only be the District Delimitation Authority. Such District Delimitation Authority only shall cause delimitation process as per the above said Regulations, by strictly following the procedure stipulated therein. Such mandatory legal procedure cannot be dispensed with.

29. That it may be apposite to note here that the Respondents ought to have complied with the mandatory requirements in Regulation 5 of Tamil Nadu Local Bodies Delimitation Regulations, 2017 which stipulate the principles and criteria for Delimitation of Ward. The underlying criteria for delimitation is that each ward of the Local Body concerned shall have parity in population as far as practically possible on the basis of last preceding census. That the issuance of an election notification, without completing the delimitation exercise is on the face of it illegal and the notification deserves to be set aside.

30. It is lastly being submitted here that for the reasons as have been

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stated herein above, it is most humbly submitted here that the election notification dated 02.12.2019, having been issued without completing all the legal formalities, deserves to be set aside.

PRAYER

In view of the facts and circumstances as enumerated herein above, it is most humbly prayed that this Hon'ble Court may be pleased to:

- a) Strike down the notification dated 02.12.2019 issued by the Tamil Nadu State Election Commission; and/or
- b) Direct the Respondent Commission to issue notification for local bodies election only after all the legal formalities, including exercise of delimitation are complete; and/or
- c) Stay the notification dated 02.12.2019 issued by the Tamil Nadu State Election Commission; and/or
- d) Pass any such orders as may be deemed fit in the interest of justice.

FILED BY

Place: New Delhi

Dated: 4/12/2019

[AMIT ANAND TIWARI]