

(1964) 03 MAD CK 0043
In the Madras High Court
Case No : Civil Suit No. 50 of 1963

Dr. A. Srinivasan, M.L.C.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-03-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 13, 14, 171, 171(3), 172(2)
Councils Act, 1957 — Section 7
Representation of the People (Amendment) Act, 1960 — Section 11, 12, 2
Representation of the People Act, 1950 — Section 11, 12, 12(1), 12(2), 6
Representation of the People Act, 1951 — Section 11(2), 12, 12(1), 12(2), 156
States Reorganisation Act, 1956 — Section 35

Citation : (1964) ILR (Mad) 771

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Advocate : V.V. Raghavan, for the Appellant; C. Rangaswamy Iyengar, for A. Alaqiriswami, Government Pleader and T. Ramprasada Rao, for the Respondent

Judgement

Venkataraman, J.—This suit has been filed by Dr. A. Sri Nivasan, a sitting member of the Madras Legislative Council, for a declaration that

the Delimitation of Council Constituencies (Madras) Amendment Order, 1961 issued by the President of India on 18th April 1961 is ultra vires

and void.

2. Article 171, Clause (3), Sub-clause (b) of the Constitution provides that about one-twelfth of the number of members of the Legislative Council

of a State shall be elected by graduates. Dr. A. Sri. nivasan is one of the members so elected by the graduates. There are five other such sitting

members They are Dr. A. Lakshmanaswami Mudaliar, Dr. P.V. Cherian, Sri. S.K. Sambandam, Sri. K. Balasubramania Iyer and Sri. T.V.

Sivanandam (Defendants 4 to 8 in the suit). To appreciate the attack of the Plaintiff on the impugned order it is necessary to refer to some statutory provisions and the history of the constitution of the Madras Legislative Council to some extent.

3. Article 327 of the Constitution empowers Parliament to make law with respect to elections to either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such houses.

In exercise of that power, Parliament passed the Representation of the People Act, 1950 (Act XLIII of 1950). Section 11 thereof enacts:

As soon as may be after the commencement of this Act. the President shall, by order determine-

(a) the constituencies into which each State having a Legislative Council shall be divided for the purpose of elections to that Council under each of

the Sub-clauses (a), (b) and (c) of Article 171;

(b) the extent of each constituency; and

(c) the number of seats allotted to each constituency.

Section 12 of the Act as it originally stood ran as follows:

The President may, from time to time, after consulting the Election Commission, by order, alter or amend any order made by him u/s 6, Section 9

or Section 11.

4. In exercise of the powers u/s 11 of the Representation of the People Act, 1950, the President passed the Delimitation of Council Constituencies

(Madras) Order, 1951 (see Gazette of India Extraordinary, dated 19th September 1951 at page 421 of the Madras Law Journal Acts and Rules

Supplement). At that time there was the composite State of Madras including the Telugu Districts and Malabar. The total number of seats of the

State Legislative Council to be elected by the graduates was fixed as six. The State itself was divided into two constituencies, Madras North

Graduates Constituency and the Madras South Graduates Constituency. The Madras North Graduates Constituency was to elect two candidates

and the Madras South Graduates Constituency four candidates.

5. The Andhra State was formed in 1953. under the Andhra State Act, 1953 (Act XXX of 1953). Speaking generally, as a result of that Act, the

Madras North Graduates Constituency comprising the Telugu districts went out. and the remaining districts in the residuary State of Madras were formed into one single constituency called the Madras Graduates Constituency (Vide Section 20 of the Andhra State Act and the Third Schedule there under). As stated already there were only four seats for the Madras South Graduates Constituency before the separation of Andhra. As a result of the Andhra State Act, 1953 the number of seats elected by the graduates in the residuary State of Madras remained at four for some time, namely, from the appointed day (the day of the formation of the Andhra State, 1st October 1953) till 21st April 1954, and after 21st April 1954 the number of seats elected by graduates, was increased to six (Vide Section 19 of the Andhra State Act). To fill up the extra vacancies which were then created with effect from 21st April 1954 elections took place and it was in those elections that the Plaintiff Dr. A. Sri. nivasan got elected for the first time. The other member who was elected was Dr. V.K. John. The term of Dr. A. Sri. nivasan and Dr. V.K. John was six years. That was u/s 156 of the Representation of the People Act, 1951 (Act XLIII of 1951).

6. In 1956 as a result of the States Reorganisation Act (Act XXXVII of 1956), Malabar went out of Madras State and Nagercoil became part of the Madras State. u/s 35 of the States Reorganisation Act. as it was originally enacted, the number of seats elected by the graduates which was six till that date was reduced to four and the two persons who were to go out were left to be determined by the Chairman of the Legislative Council. It is the Plaintiff's case that Dr. P.V. Cherian, the then Chairman of the Legislative Council (he is also the Chairman now) wanted to send out the Plaintiff and Dr. V.K. John in exercise of this power on account of personal reasons. It is alleged that Plaintiff and Dr. V.K. John were active members of the Council in the opposition and were found to be inconvenient. Incidentally it may be mentioned that the plaintiff has made a mistake in referring to this situation as having arisen under the Andhra State Act. 1953, but the point has been clarified in the evidence of the Plaintiff that the situation arose u/s 35 of the States Reorganisation Act (Act XXXVII of 1956). There appears to have been a protest about the reduction of seats in the Madras Graduates Constituency from six to four. What-ever it was, the number was restored to six by Act IXVII of 1956 and that

provision empowering the Chairman of the Legislative Council to choose two out of six was eliminated. This position was reiterated in the

Legislative Councils Act (Act XXXVII of 1957)--vide Section 7 thereof. The result was that the Plaintiff and Dr. V.K. John were not sent out and

they continued to be members.

7. Dr. John, however, died sometime in 1958. A casual vacancy thus arose and in that vacancy Sri. S.K. Sambandam (Defendant 6) was elected.

Under that election he could sit only till 21st April 1960.

8. In 1960 however both the Plaintiff and Sri. S.K. Sambandam were re-elected and their term of membership will expire on 21st April 1966.

9. On 18th April 1961 when the impugned order was passed besides the Plaintiff and Sri. Sambandam, the other members of the Graduates

Constituency were Dr. A. Lakshmanaswami Mudaliar, Dr. P.V. Cherian, Sri. Balasubramania Iyer and Sri. Sivanandam. The term of membership

of Dr. Lakshmanaswami Mudaliar and Dr. P.V. Cherian will expire on 20th April 1964. The term of membership of Sri. Balasubramania Iyer and

Sri. Sivanandam was due to expire on 20th April 1962. It may be mentioned at this stage that the reason why the terms of the membership of the

different members expire on different dates is that under the statutory provisions the Legislative Council is not subject to dissolution but one-third of

the members shall retire by turns. As a matter of detail reference may be made to Article 172(2) of the Constitution, Section 156 of the

Representation of the People Act, 1951, the Madras Legislative Council Term of Office of Members Order, 1952, published in G.O. No. 1864

(Public) Elections, dated 21st July 1952 (page 112 of the Madras Rules and Acts Supplement of Madras Law Journal) and the Fourth Schedule in

the Andhra State Act. Though it may not be quite relevant it may be mentioned that subsequent to the filing of the suit (suit was filed on 30th

October 1961) Sri. Balasubramania Iyer and Sri. Sivanandam were re-elected for a period of six years with effect from 21st April 1962. Focusing

our attention once again on the state of things when the impugned order was passed on 18th April 1961, the position was as follows. The whole

State of Madras including Nagercoil district which came into the Madras State as a result of the States Reorganisation Act XXXVII of 1956,

formed one single constituency for the purpose of election by the graduates

under Article 171(3)(b). The number of seats available was six. All the six members were elected from the entire constituency and their term of membership was due to expire on the following dates:

Sri. K. Balasubramania Iyer and Sivanandam - 20th April 1962.

Dr. A. Lakshmanaswami Mudaliar and Dr. P.V. Cherian - 20th April 1964.

Dr. A. Srinivasan and Sri. Sambandam - 20th April 1966.

10. Before explaining what the President did under the impugned order it will be necessary to refer to the fact that by Act XX of 1960 which

received the President's assent on 8th May 1960, Parliament amended Section 12 of the Representation of the People Act, 1950. As stated

already Section 12 as it originally stood ran thus:

The President may, from time to time, after consulting the Election Commission, toy order, alter or amend any order made by him u/s 6, Section 9

or Section 11.

11. By Act XX of 1960 the above was renumbered as Sub-section (1) of Section 12 and the following was added as Sub-section (2);

An order under Sub-section (1) may contain provisions for the allocation of any member representing any council constituency immediately before

the making of the order to any constituency delimited anew or altered by the order and for such other incidental and consequential matters as the

President may deem necessary.

12. The impugned order purports to have been passed in exercise of powers conferred by Section 12 of the Representation of the People Act,

1950 and must be presumed to have been enacted in the exercise of the powers u/s 12 of the Representation of the People Act, 1950 as amended

by Act XX of 1960. The impugned order made alterations in the Delimitation of Council Constituencies (Madras) Order, 1951, in respect of the

Graduates constituencies, Teachers constituencies and Local Boards constituencies. We are now concerned only with the alterations in respect of

the Graduates constituency. We have seen that prior to the impugned order the whole of the Madras State constituted a single constituency for the

election of six members by the graduates. In other words each of the six members had been elected by the graduates of the entire State. What was

done by the impugned order was that in respect of graduates, the State was split

up into five constituency, (iv) Madras District Graduates, Constituency, (ii) Madras North Graduates Constituency, (iii) Madras East Central Graduates, Constituency, (iv) Madras West Central Graduates, Constituency and (v) Madras South Graduates Constituency. The Madras District Graduates, Constituency is to consist of the Madras District with two seats. The Madras North Graduates Constituency consists of Chingleput, North Arcot and South Arcot districts and elects one member. The Madras East Central Graduates, Constituency consisting of Thanjavur and Tiruchirappalli districts elects one member. The Madras West Central Graduates Constituency consisting of Salem Coimbatore and Nilgiris districts elects one member. The Madras South Graduates Constituency consisting of Madurai, Ramanathapuram, Tirunelveli and Kanyakumari districts elects one member. Paragraph 3 of the impugned order makes allotment of the then sitting six members to one or the other of the newly constituted constituencies. Dr. A. Lakshmana-ewami Mudaliar and Dr. P.V. Chefan were allocated to the Madras District Graduates" Constituency, Sri. S.K. Sambandam, to Madras-North Graduates" Constituency, Sri. K. Balasubramania Iyer to Madras East Central Graduates" Constituency, Sri. T.V. Sivanandam, to Madras West Central Graduates" Constituency and Dr. A. Sri Nivasan, the Plaintiff, to the Madras South Graduates Constituency. Before proceeding further it will perhaps be well to quote the actual terms of the impugned order in so far as they are relevant for our purpose:

G.S.R. 567.-In exercise of the powers conferred by Section 12 of the Representation of the People Act, 1950, the President after consulting the Election Commission, is pleased to make the following Order, namely:

(1) This order may be called the Delimitation of Council Constituencies (Madras) Amendment, Order 1961.

(2) In the Delimitation of Council Constituencies (Madras) Order, 1951, for the table, the following shall be substituted, namely:

TABLE

Name of Constituency	Extent of Constituency	Number of Seats
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(1)	(2)	(3)
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Graduates Constituencies		
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1 Madras District Madras District.... 2

Graduates....

2 Madras North Graduates....Chingleput, North Arcot 1

and South Arcot district

3 Madras East Central Thanjavur and 1

Graduates.... Tiruchirappalli districts

4 Madras West Central Salem, Coimbatore and 1

Graduates.... Nilgiris district.

5 Madras South Graduates....Madarai, Ramanathapuram,1

Tirunelveli and

Kanyakumari districts.

(3) As from the date of this Order every member of the Madras Legislative Council whose name is specified in the first column of the table below

shall be deemed to have been elected to this said Council by the Council constituency specified against his name in the second column of the said

table:

TABLE

Name of member Constituency to which allocated

(1) (2)

1 Dr. A. Lakshmanaswami Madras District Graduates.

Mudaliar....

2 Dr. P.V. Cherian.... Do.

3 Sri. S.K. Sarabandun.... Madras North Graduates

4 Sri. K. Balaaubramania Iyer... Madras East Central Graduates

5 Dr. T.V. Sivanandam Madras West Central Graduates

6 Dr. A. Srinivasan Madras South Graduates

13. In understanding the attack in the plaint on the impugned Order it has to be mentioned that the plaint as originally drafted made no reference to

the amendment effected in Section 12 of the Representation of the People Act by Act XX of 1960. When the Plaintiff sent that plaint to the

Government of India with his notice of suit u/s 80, CPC the Government of India,

in their reply, drew the attention of the Plaintiff to the amendment effected by Act XX of 1960 and also relied on the immunity conferred by Article 329, Clause(a) of the Constitution. Thereupon the Plaintiff added a new paragraph, numbered as 10(A) in the plaint, to deal with the contentions raised in the reply notice. However, for our present purpose we can deal with the matter in a consolidated way.

14. It will be convenient at this stage to quote Articles 327 and 329 of the Constitution.

327. Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

329. Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any Court; and

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

15. While in paragraph 8 of the plaint the Plaintiff has conceded the power of Parliament to make laws with respect to election to either House of

the Legislature including delimitation of constituencies in paragraph 10A (ii) he attacks the validity of Act XX of 1960, the Representation of the

People Amendment Act, and states that the conferment of power u/s 12(2) of the Representation of the People Act, 1950 on the President to

allocate the existing members of the Council to different or newly constituted constituencies is ultra vires, arbitrary, discriminatory and void.

Referring to the immunity under Article 329 this is what the Plaintiff states in paragraph 10A (iii).

16. The Plaintiff states that the bar to interference by Courts in electoral matters under Article 329 of the Constitution can only refer to the power

of the Parliament or State Legislature to make Law relating to delimitation of constituencies or allotment of seats to such constituencies. But when

the Parliament confers arbitrary power on the President to allot existing members to different or newly constituted constituencies the Plaintiff states

that the bar under Article 329 is inoperative.

17. In other words, the position adumbrated by the Plaintiff is that while Parliament itself may have power to make an Order splitting up the entire

State which was one constituency into five constituencies allotting existing members to the newly constituted constituencies, Parliament could not

validly delegate that power to the President without laying down any criterion for adoption by the President thereby enabling the President to split

up the constituency and make allotment of the existing members arbitrarily. In paragraph 8 of the plaint, however, the Plaintiff concedes the power

of Parliament to make laws with respect to all matters in connection with election to either House of the Legislature including the delimitation of

constituencies, and in paragraph 9 he also concedes the power of the President) u/s 12 of the Representation of the People Act to alter or amend

the order made by him previously u/s 11 delimiting the constituencies. The Plaintiff also states in paragraph 9 that in exercise of the said power it is

open to the President to divide a single constituency into five constituencies but says that the President has no power to allot the existing members

to different and newly constituted constituencies. The first ground, therefore, on which the Plaintiff attacks paragraph 3 of the impugned Order, is

that the President has no authority to make an allotment of the existing members to the different and newly constituted constituencies. Lower down

he states with reference to this contention that the existing members having been elected from the entire State, it is not competent to the President

to order that any member ceases to represent the electorate of the entire State but will be deemed to represent a limited area of the State arbitrarily

allocated by him. The Plaintiff says that that would also affect the right of the electorate who elected the member to represent the electorate of the

entire State.

18. The second ground on which paragraph 3 of the Order in question is attacked is that it is void under Article 14 read with Article 13 of the

Constitution on account of hostile discrimination against the Plaintiff and other

members in favour of the first and second named members in the table appended to paragraph 3 and in particular Dr. P.V. Cherian the second named member. Explaining this contention, the Plaintiff says in paragraph 10 of the plaint that when the number of seats was reduced from 6 to 4 by the Andhra State Act, 1953 with power to the Chairman of the Council to pick out two members who were to lose their seats, the Chairman, Dr P.V. Cherian determined that Dr. V.K. John and the Plaintiff should retire. The Plaintiff alleges that this was done for the personal interest of Dr. P.V. Cherian so that two of the active members of the Council in the Opposition were put aside. I have already pointed out that the reference to the Andhra State Act, 1953 is a mistake for the States Reorganisation Act, 1956 and this has been clarified in the evidence of the Plaintiff. The Plaintiff goes on to state in paragraph 10 of the plaint: Again on the present occasion the Plaintiff has been discriminated against presumably on the advice of the State Government (third Defendant) accepted by the Election Commission and the Union Government who in this context have advised the President. While the plain-tiff who is a Madras Tamilian, born and bred up and educated in Madras from his childhood and has been carrying on his profession in Madras is allocated to Madras South which includes Ranyakumari district transferred from Kerala, Dr. P.V. Cherian, a Malayalee coming from the Kerala State and Dr. A. Lakshmanaswami Mudaliar, a native of Arcot are allocated to Madras City. Further, while Sri. K. Balasubramania Iyer, Sri. S.K. Sambandam and Sri. T.V. Sivanandam coming from Thanjavur, South Arcot and Coimbatore districts have been rightly allotted Madras East Central, Madras North and Madras West Central respectively, the Plaintiff coming from Madras and who ought to have been allotted to Madras has been allotted to Madras South. The Plaintiff states that this is a case of hostile discrimination resulting from looking upon the Plaintiff with "an evil eye". Dr. V.K. John, having died, escaped the "evil eye" of the State Government and the Plaintiff is solely facing the discrimination and respectfully submits that he be relieved there from. Thus paragraph (3) of the Delimitation of Council Constituencies (Madras) Amendment Order, 1961 is beyond the competence of the President both for want of authority and discrimination and as such ultra vires, illegal and void.

19. The first Defendant in the suit is the Union of India represented by the Secretary to the President. The second Defendant is the Election

Commission, New Delhi. The third Defendant is the State of Madras and Defendants 4 to 8 are Dr. A. Lakshmanaswami Mudaliar, Dr. P.V.

Cherian, Sri. S.K. Sambandam, Sri. K. Balasubramania Iyer and Sri. T.V. Sivanandan.

20. Defendants 1 and 2 have filed a joint written statement, contending that Section 12(1) of the Representation of the People Act, 1950

empowers the President to amend the previous Order u/s 11 after consulting the Election Commission and that Sub-Section 2, which came into

force under Act XX of 1960, specifically empowers him to allot any member representing any constituency immediately before the making of the

Order to any constituency delimited a new or altered by the Order, that the Order in question is therefore justified by the terms of Section 12 (1)

and (2) of the Representation of the People Act, 1950. and that under Article 329(a) of the Constitution the validity of Sub-section (2) of Section

12 cannot be called in question in any Court of law. Regarding the contention of discrimination, it is alleged that the allocation was made according

to certain principles evolved by the Election Commission, which are stated thus:

In Two Member Constituencies the main basis of the allotment is that the terms of Office of both the members should be the same so that the

Constituency need not come up for election more than once in six years. Subject to this consideration, members have been allotted, as far as

practicable to their own districts.

21. It is pointed out that out of the six sitting members four resided in the Madras City, namely, Dr. A. Lakshmanaswami Mudaliar, Dr. P.V.

Cherian, Sri. K. Balasubramania Iyer and the Plaintiff. But of these four, only the terms of membership of two of them, namely, Dr. A.

Lakshmanaswami Mudaliar and Dr. P.V. Cherian expire on the same date, namely, 20th April 1964 whereas the dates of expiry of the term of

membership of the other two Sri. K. Balasubramania Iyer and Dr. A. Sri. nivasan were different, namely, 20th April 1962 and 20th April 1966 as

disclosed in the evidence and that in order to avoid the double number constituency, namely, the Madras District Constituency coming up for

election more than once in six years, Dr. Lakshmanaswami Mudaliar and Dr. P.V.

Cherian whose terms expired on the same date, namely, 20th

April 1964 were allotted to Madras district. To put it in another way, it is pointed out that any other allocation of these four persons to the Madras

District Graduates Constituency would have entailed election twice in a period of six years and that was why it was avoided. Having thus allotted

Dr. A. Lakshmanaswami Mudaliar and Dr. P.V. Cherian to the Madras District Graduates' Constituency, four were left. Dr. Sivanandam, whose

permanent address is shown in the Coimbatore district, was allotted to the Madras West Central Graduates Constituency comprising of Salem,

Coimbatore and Nilgiris districts. Sri. S.K. Sambandam, whose permanent place of residence is South Arcot district was allocated to Madras

North Graduates Constituency comprising of Chingleput, North Arcot and South Arcot districts. There remained only two, Sri. K. Balasubramania

Iyer and Dr. A. Sri. nivasan. They were allocated respectively to Madras East Central Graduates Constituency and Madras South Graduates

Constituency respectively. It is urged that the general principles on the basis of which the allocation was made were reasonable and could not be

considered discriminatory.

22. The written statement of the third Defendant, the State of Madras is identical with the written statement of Defendants 1 and 2. The other

Defendants have filed no written statements, but at the trial Sri. Ramaprasada Rao appeared for Dr. P.V. Cherian and cross-examined the Plaintiff.

23. The following issues were framed by the City Civil Court where the suit was first laid:

1. Is paragraph 3 of the Delimitation of Constituencies (Madras) Amendment Order, 1961, ultra vires, illegal and void?

2. Has there been any discrimination against the Plaintiff?

3. Is the said Order void under Article 14 read with Article 13 of the Constitution for hostile discrimination ?

4. Whether it is within the competence of the President to allocate existing member to any new constituency?

5. Is the suit maintainable?

6. Can the validity of Section 12, Sub-section (2) of the Representation of the people Act, 1960, be questioned in this Court?

7. To what relief, if any, is the Plaintiff entitled?

24. The first question that arises for consideration is the validity of Section 12(2) of the Representation of the People Act, 1950, introduced by Act

XX of 1960 because the impugned Order may be assumed to have been passed in exercise of the powers u/s 12(2). Now, if Article 329(a) of the

Constitution had not been there, I have little doubt that Section 12(2) must be held to be ultra vires the Parliament. That is because Section 12(2)

does not lay down any principle or policy for the guidance of the President in making the allocation of the existing members to the constituencies,

which may be newly formed by the President's Order. The case law bearing on this aspect of the matter has been summarized by the Supreme

Court in the form of five propositions in *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and Ors.* [1959] S.C.R. 279, 298, 299 . I shall

quote only the relevant portions:

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons

or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the

Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably

regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether

such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are

intended to apply only to a particular class of persons or things. Where the Court finds that the classification satisfies the tests, the Court will

uphold the validity of the law....

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of

classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case

the Court will strike down the law as an instance of naked discrimination....

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of

the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise

of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is

given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or

policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court

will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of

selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to

enable it to discriminate between persons or things similarly situated and that, therefore, the discrimination is inherent in the statute itself. In such a

case the Court will strike down both the law as well as the executive action taken under such law....

25. This classification was endorsed in a later decision, the Delhi Slums case *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*,

. Their Lordships reaffirmed the principles and made a summary on slightly different lines. Propositions 1 and 2 are as follows:

(1) If the statute itself or the rule made under it applies unequally to persons or things similarly situated it would be an instance of a direct violation

of the constitutional guarantee and the provision of the statute or the rule in question would have to be struck down.

(2) The enactment or the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be

accorded to persons or things similarly situated. This would happen when the legislature vests a discretion in an authority be it the Government or

an administrative official acting either as an executive officer or even in a quasi-judicial capacity by a legislation which does not lay down any policy

or disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary powers enabling it to discriminate.

26. But there is Article 329(a) which prevents this Court from questioning the validity of Section 12(2) of the Representation of the People Act,

1950. It is certainly law made or purporting to be made under Article 327 of the Constitution by Parliament.

27. The next question is whether the impugned Order of the President can also enjoy the immunity conferred by Article 329(a). It seems to me that

it cannot. To attract the immunity under Article 329(a), the law must be one made or purporting to be made under Article 327. Turning back to

Article 327, it speaks only of Parliament making the law relating to elections including delimitation of constituencies. It does not in terms refer to

law made by the President in exercise of the powers conferred by the Parliament. Since Article 329 is a provision ousting the jurisdiction of the

civil Courts it must be construed strictly and the immunity conferred thereby cannot be extended beyond its express terms. It will therefore be open

to this Court to examine the validity of the impugned Order.

28. As already stated the plaint itself in paragraph 9 concedes the power of the President to divide a single constituency into five constituencies.

But even apart from that concession, the President has got power to alter a single constituency into five constituencies by virtue of Section 12(1) of

the Representation of the people Act, 1950. Turning to the question whether the President has power to make the allotment of the existing

members to the newly constituted constituencies it is clear that Section 12(2) of the Representation of the People Act expressly confers that power

on the President. The only question is whether the exercise of that power has not been valid. That again reduces itself to the question whether there

has been a violation of Article 14 of the Constitution which runs:

The State shall not deny to any person equality before law or equal protection of laws within the territory of India.

29. The contention of the Plaintiff's learned Counsel Sri. V.V. Raghavan on this is that the President's Order does not itself indicate any reason for

the allotment of the six members to the particular constituencies noted against their names and that therefore the Order is on the face of it arbitrary

and must be struck down as violative of Article 14. Actually evidence has been led by Defendants 1 and 2 by examining the Deputy Election

Commissioner Sri. P.S. Subramaniam as D.W. 1 to speak to the principles on which and the circumstances under which the impugned Order was

passed. The question is whether the Court is precluded from considering that evidence and whether the impugned Order must be struck down

because it does not itself set out the principles on which the Order was passed. It seems to me that since Section 12(1) of the Representation of

the People Act, 1950 empowers the President to alter by an order, a prior order

of delimitation and allotment after consulting the Election

Commission and since the impugned Order itself says that the order was passed after consulting the Election Commission, it is permissible for the

Defendants to adduce evidence of the advice which the Election Commission tendered to the President. Though both sides stated that there was

no authority on this question either way, it seems to me that authority is to be found in some of the decisions of the Supreme Court supporting the

view which I have taken. Thus in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, the affidavits of Sri. H.M. Patel, Principal

Secretary to the Finance Ministry, Government of India, stating the circumstances which led to the issue of the impugned Notification were looked

into (pages 307 and 308). Similarly in the *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, it was observed that the Court

might take into consideration facts of which it is apprised in the form of affidavits, in determining the question whether the impugned legislation lays

down any policy. Similarly in *P.J. Irani Vs. The State of Madras*, which was a case where the Government exempted a particular building from the

provisions of the Madras Buildings (Lease and Rent Control) Act, 1949, it was held that the High Court was justified in calling for the reasons

which induced the Government to pass the order of exemption and at page 184 it is stated:

When the legality of the order is challenged, its intra vires character could be sustained only by disclosing the reasons which lead to the passing of the order.

30. It is true that in that case it was held that the Act itself laid down the policy sufficiently and was therefore valid and it was only the Government

Order, which according to the majority, was not valid. Here the position as the same because by virtue of the immunity conferred by Article 329(a)

the Act of the Parliament, namely, Section 12(2) of the Representation of the People Act must itself be held to be valid. I, therefore, hold that it is

permissible for me to look into the evidence which has been adduced to justify the impugned Order.

31. The evidence of D.W. 1, the Deputy Election Commissioner, is that it was the Election Commission which took the initiative in the matter.

They divided the Madras State which was a single constituency into five different

constituencies as reflected in the impugned Order on the basis of the number of graduates in each area. Thus, so far as the Madras District is concerned, it would have roughly twice the number of electors as in any one of the other four constituencies. Then they allocated the sitting members to the newly delimited constituencies. The basis for the allocation was their ordinary place of residence as furnished in the list supplied by the Legislative Council. Care was however taken to ensure that both members allocated to the two member constituency retired in the same year so that the constituency need not elect more than once in six years as far as practicable. These were the general principles which were adopted not merely for the graduates constituency but also for all other constituencies. So far as the graduates constituency in Madras was concerned, there were four members who had their ordinary place of residence in Madras, namely, Dr. P.V. Cherian, Dr. A. Lakshmanaswami Mudaliar, Dr. A. Sri. nivasan and Sri. K. Balasubramania Iyer. But of these four, the only members who would be vacating their seat on the same day were found to be Dr. A. Lakshmanaswami Mudaliar and Dr. P.V. Cherian, their dates of retirement being 20th April 1964 and that is why they were allotted to the Madras District Constituency, Sri. K. Balasubramania Iyer was due to retire in 1962 and Dr. Sri. nivasan in 1966 and since their dates of retirement were different they were not allotted to Madras district. Sri. Sivanandam was allotted to Madras West Central Graduates Constituency because he was a resident of Coimbatore. Sri. Sambandam was ordinarily a resident of South Arcot and therefore he was allotted to Madras North Graduates Constituency. Then the two members left were Dr. A. Sri. nivasan and Sri. K. Balasubramania Iyer. Sri. K. Balasubramania Iyer was allotted to Madras East Central Graduates Constituency and Dr. A. Sri. nivasan to Madras South Constituency. But in making the last allotment no basis was adopted and it was just an accident that Dr. Sri. nivasan was allotted to Madras South Graduates Constituency comprising Madurai, Ramanathapuram, Tirunelveli and Kanyakumari districts instead of being allotted to Madras East Central Constituency. D.W. 1 states further that they (Election Commission) sent these proposals to the State Government and the State Government did not make any comments so far as the Graduates Constituency was concerned. The Election

Commission then submitted the proposals to the President and the President issued the Order in question, entirely adopting the recommendation of

the Election Commission. In cross-examination, D.W. 1 states that they did not consult the Chairman of the Madras Legislative Council or

anybody else before making the draft proposals to the State Government. He also explains that the reason for the principle that in the case of two

member constituencies the election should be only once in six years was to avoid extra cost which would be involved if elections were to be held

twice in the course of six years.

32. I see no reason to reject this evidence of D.W. 1. The criteria adopted by the Election Commission seem to me to be reasonable. In cross-

examination questions were put to the witness to suggest that even in dividing the single constituency into five constituencies making Madras a

double member constituency, there was a motive to ensure that Dr. A. Lakshmanaswami Mudaliar and Dr. P.V. Cherian were allotted to the

Madras district. But I overruled this line of cross-examination pointing out that this line of attack had not been formulated in the plaint and in fact

the plaint concedes in paragraph 9 the power of the President to divide a single constituency into five constituencies. After all there does not seem

to be anything sinister in the method adopted by the Election Commission, for instance, in splitting up the entire constituency into five constituencies

and once that is done, there is nothing surprising in Madras city getting two seats on the basis of the number of electors therein. There does not

seem to be anything wrong in not splitting up Madras city further. Once that stage is reached I can see no objection to the adoption of the principle

that in a two member constituency there should be election only once in six years, in the interest of economy.

33. In his evidence the Plaintiff has made it clear in more than one place that he did not know the circumstances under which the impugned Order

was passed at any time before it was published. Yet he stated also:

I know that Dr. Cherian had something to do in this matter with the Election Commission.

34. His own Counsel put the question whether he could be more specific and he answered

I know only that much

35. In cross-examination a question put to him was

Yon are not sure whether Dr. Cherian was consulted?

36. His answer was

I do not know anything about it.

37. This evidence cannot be construed as sufficient to disprove the evidence of D.W. 1 that the Election Commission did not consult Dr. Cherian,

Chair-man of the Council, before making the proposals. In this view of the matter, it is unnecessary to say anything about the evidence of the

Plaintiff that Dr. Cherian strongly dislikes him. The Plaintiff makes a grievance of the fact that he and the other members of the Council were

generally not consulted by the Election Commission before they made their recommendations. I do not however think that the Election Commission

was required under law to consult the Plaintiff and the other members of the Council so as to render the recommendation void for non-

consultation.

38. Sri. V.V. Raghavan seeks to attack the Order on the ground that as disclosed in the evidence there is no rational basis for allocation of the two

members Sri. K. Balasubramania Iyer and the Plaintiff respectively to the Madras East Central and Madras South Graduates Constituencies. But

that is not the grievance ventilated in the plaint. The grievance of the Plaintiff in the plaint is that whereas he has spent all his life in Madras city he

has been allotted to Madras South Graduates Constituency in the extreme south while Dr. Cherian has been allotted to Madras. The utmost that

the Plaintiff can claim as between him and Mr. Balasubramania Iyer is that the further allocation between them should be made by casting lot, but

that would not satisfy the grievance of the Plaintiff mentioned in the plaint.

39. The above discussion shows that the Plaintiff is not entitled to the declaration sought for. Issues 1 to 3 are answered in the negative. Issue 4 is

answered in the affirmative.

40. Issue 5:1 do not see how the suit is not maintainable. This issue is answered in the affirmative.

Issue 6: The validity of Section 12(2) of the Representation of the People Act, 1960 cannot be questioned because of Article 329(a) of the

Constitution. The impugned Order of the President cannot have the unanimity of

Article 329(a) but on examination it is found that it is not void.

Issue 7: The Plaintiff is not entitled to the declaration prayed for. The suit is accordingly dismissed. Regarding costs, it has to be observed that the

impugned order does not itself set out the basis for the allocation and even the reply sent by the Government of India to the suit notice of the

Plaintiff does not explain the basis on which the President's Order was passed. That was disclosed only in the written statement filed by

Defendants 1 and 2. Further, a plea was taken that even the President's Order is immune from scrutiny under Article 329(a). Having regard to

these facts and the public nature of the matter involved, I think it right that the parties may be asked to bear their own costs.