

(2010) 08 KL CK 0116

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23424 of 2010 (C)

K. Habeebulla Ansari

APPELLANT

Vs

The Secretary, The State Delimitation Commission, The State
Election Commission and The District Collector

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 243C, 243K, 243O, 327

Delimitation Act, 1972 — Section 8, 9

Kerala Panchayat Raj Act, 1994 — Section 10, 10(3), 10(3A), 10A, 11F

Citation : (2010) 08 KL CK 0116

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Tom K. Thomas, for the Appellant; Murali Purushothaman, SC, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The petitioner is aggrieved by the ward division of Alathur Grama Panchayat in Palakkad District. Ext.P2 is the copy of the objection submitted by the petitioner. On 25.1.2010, the officer on behalf of the District Collector heard the petitioner. It is pointed out that in the hearing, the objections were found to be genuine also.

2. The final order delimiting the constituencies was published as per Ext.P3. It is pointed out that the wards are now delimited breaking natural boundaries like public roads, rivers, etc. Political considerations have been weighed in delimiting the wards. In paragraph 6 onwards of the writ petition, the petitioner has given certain details with regard to the different wards, to contend that natural boundaries have not been followed. One of the contentions raised is that the total number of residential buildings shown in the draft publication and the final order are totally incorrect when compared with the assessment register. Finally, it is pointed out that the delimitation order is against the guidelines prescribed by

the Commission itself. Certain instances wherein some houses have been shifted and the other houses have been retained in the new ward No. 11 and also some houses have been shifted to ward No. 12 without any justification, have also been pointed out in the writ petition.

3. On behalf of the Delimitation Commission, a statement has been filed. Firstly, it is contended that the writ petition is not maintainable in the light of the express bar of judicial review as provided under Article 243-O(a) of the Constitution of India.

4. In the preliminary objections, it is pointed out that in the light of Article 243-O(a) of the Constitution of India, there is a bar for interference by courts in respect of delimitation of constituencies. Article 243-O(a) states as follows:

Notwithstanding anything in this Constitution-

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

5. Section 10 of the Kerala Panchayat Raj Act provides detailed provisions for the delimitation of constituencies of Panchayats. We are concerned with Section 10(3) and 10(3A) which are extracted below:

Section 10(3) An order made by the State Election Commission or the Officer authorised by it or the Delimitation Commission shall not be called in question in any court of law.

Section 10(3A) Every order issued by the Delimitation Commission with regard to the delimitation of constituencies under this Section shall be published in the Gazette and it shall have the force of law.

Going by Section 10(3A), once the delimitation order is published in the Gazette, it shall have the force of law and, therefore, the learned Standing Counsel for the Delimitation Commission submitted that the same will attract the bar under Article 243-O(a) of the Constitution of India. Reliance is placed on various decisions of the Apex Court and this Court.

6. The issue is no longer *res integra* in the light of various decisions of the Apex Court and this Court viz., *Meghraj Kothari Vs. Delimitation Commission and Others*, , *Chief Electoral Officer Vs. Sunny Joseph*, , *Satyan V.V. v. Election Commission of India and Ors.* (2008) 4 KHC 245 wherein it was held that Article 329 is a bar for judicial review over the orders passed by the Delimitation Commission. In regard to the delimitation of wards of Panchayats also, the issue is governed by the decision in *State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.*, wherein at paragraph (45), the bar under Article 243-O(a) was considered and it was held that "if we read Article 243-C, 243-K and 243-O in the place of Article 327 and Section 2(kk), 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious

that neither the delimitation of the Panchayat area nor the constituencies in the said areas and allotment of seats to the constituencies could have been challenged nor the court could have entertained such challenge except on the ground that before the delimitation, no objection were invited and no hearing was given.

7. Recently, in *Chirayinkeezhu A. Babu v. Delimitation Commission and Ors.* 2010 (1) KHC 953 the same aspect was considered by me and it was held in paragraph (27) that "Article 329(a) contains an absolute bar for this Court to consider the challenge against the order under the Delimitation Act, which is well settled by a decision of the Constitution Bench of the Apex Court in *Meghraj Kothari Vs. Delimitation Commission and Others*, ".

8. In fact, in *Association of Resident of Mhow (ROM) and Another Vs. The Delimitation Commission of India and Others*, also the above legal position has been reiterated.

9. Another decision to be noticed is a decision of a Division Bench of this Court in *Kunhabdulla v. State of Kerala* 2000 (3) KLT 45. The legal position was examined by the Bench in the light of the unamended provision of the Panchayat Raj Act, 1994, namely Section 10A itself. The challenge was against the validity of Section 10A. Section 10A conferred power of review on the Election Commission on an order passed u/s 10, by the authorised officer delimiting the wards. Therein, while examining the said question, this Court noticed that the provisions enable the District Collector to delimit the constituencies and Section 10A of the Panchayat Raj Act confers the power of review on the Election Commission. While considering these aspects, it was held in paragraph (5) that "Article 243-O(a) which bars the jurisdiction of any court to consider the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies will not get attracted where sweeping changes are made by the Election Commission to the delimitation order duly passed and published by the District Collector after hearing objections etc., under the guise of the power of review conferred on him u/s 10A of the Act when the whole election process is yet to begin and there is ample time left to undo the harm done by the former. In such a situation, this Court can exercise jurisdiction under Article 226 of the Constitution at least for the limited purpose of testing the constitutional validity of the provision (Section 10A) under which the Election Commission has passed the impugned orders varying the original order of the District Collector without going into the merits of the order itself". Apart from the same, this Court distinguished the *Meghraj Kothari Vs. Delimitation Commission and Others*, on the view that there is no provision in Section 10A that the order passed u/s 10A by the Election Commission will have the force of law when published in the Gazette and, therefore, it will not be law for the purpose of Article 243-O. Accordingly, it was held in paragraph (7) that bar under Article 243-O(a) will not be applicable. But in the light of the Judgments of the Apex Court noticed above and that of the Division Benches referred to above, the dictum laid in

Kunhabdulla's case 2000 (3) KLT 45 cannot be applied on all fours to the situation pointed out herein. Now Section 10(3A) has been added making it clear that on publication in the Gazette the order of delimitation will have the force of law. Once the notification is published in the Gazette, then going by the decision of the Apex Court, the bar applies, as it will be the law for the purpose of Article 243-O(a) and the non-obstante clause therein is important and becomes operative. Therefore, the said decision is clearly distinguishable on the facts of the said cases and the legal position laid down by the various decisions of the Apex Court.

10. In the light of the above, the preliminary objections raised by the Commission is sustainable.

11. It is pointed out in the statement that 31 objections were received including that of the petitioner, which were enquired through the District Development Officer for Scheduled Castes, Palakkad. On the basis of the enquiry report and the remarks thereon by the District Collector, the objectors were personally heard by the Commission on 17.3.2010 and the Commission passed an order on 5.5.2010 directing the Secretary of the Grama Panchayat to effect certain changes in the draft proposal. It is explained that Ext.P3 order is passed strictly adhering to the guidelines issued by the Commission. From the statement, it is evident that the assessment registers have been relied upon to fix the actual number of residential buildings.

12. Evidently, the delimitation order is passed after considering various objections which were subjected to enquiry by the enquiry officer. Every one of the objections need not result in a separate order to be passed by the Commission. The process of delimitation involves publication of draft proposal, inviting objections and enquiry and a hearing on the objections. It is not as if the Commission should consider every one of the objections, as a proposal itself. It is explained that the assessment registers have been relied upon to fix the number of residential buildings and no illegality can be attached to the same. The population is taken as per the 2001 census. The annexure to the delimitation order contains the details regarding the number of houses and the boundaries fixed. It cannot therefore be said that natural boundaries have been violated also.

For all these reasons, I find no ground to interfere with the process of delimitation. The writ petition is therefore dismissed. No costs.