
(2010) 08 KL CK 0117

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21633 of 2010 (D)

M.P. Abdul Ali Master

APPELLANT

Vs

The State Delimitation Commission, The State Election
Commission, The District Collector and The Secretary,
Vazhakkad Grama Panchayat

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 0117

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

Bench : Single Bench

Advocate : Sajeew Kumar K. Gopal, for the Appellant; Murali Purushothaman, SC, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The petitioner is aggrieved by the delimitation of wards of Vazhakkad Grama Panchayat. The preliminary notification was published on 21.12.2009 showing the total number of wards as 19. Ext.P3 is the objection submitted by the petitioner. Therein, various anomalies have been pointed out. It is mainly pointed out that in certain wards minimum number of population is not maintained and in certain wards more than the maximum number have been included. A hearing was conducted on 15.3.2010 wherein also certain suggestions have been made.

2. The petitioner has detailed in ground B, the various alleged discrepancies.

3. On behalf of the Delimitation Commission, a detailed statement as well as an additional statement has been filed. In the statement, a preliminary objection has been raised with regard to the maintainability of the writ petition, relying upon 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 (S.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. In the additional statement, it is explained that there had not been any discrepancy either with regard to ward Nos. 8 and 11. It is explained that the assessed population of ward No. 8 is 1361, i.e. 285 less than the average population. The average population of the Panchayat is 1646. Ward No. 8 has a peculiar geographical feature with Chaliyar river on the north and Kazhukuthan mountain on the south. The difference in the average population is due to these geographical features. The assessed population of ward No. 11 is 1763, i.e. 117 more than the average population. This difference in the average population is due to fixing of natural boundaries like mountains, canals, roads, etc. The explanation is well founded. Natural boundaries are bound to be maintained by the Commission as far as possible. The Commission has further explained that the northern boundary of ward No. 11 is Kazhukuthan mountain and this is the southern boundary of ward No. 8. This is a natural boundary. If the northern boundary of ward No. 11 is shifted, the houses cannot be collated. In the further report submitted by the enquiry officer and the Secretary of the Grama Panchayat on 15.5.2010, it was reported that if changes suggested in the enquiry report are effected, it will be inconvenient for some families for casting their votes since they will have to travel more to reach the polling station. Thus, it is evident that the objection raised by the petitioner on this score is unfounded.

12. The petitioner's contention that the enquiry report ought to have been accepted, is resisted on the principle stated by this Court in *Thomas Jacob v. State of Kerala* and Ors. ILR 2005 Ker. 194. Therein, it was held as follows:

It was also not conceivable that the Delimitation Commission was obliged to accept the report of the officers, who were deputed and authorised for fact finding enquiry, nor any deviation there from was permissible. On materials received, it would have been possible for them to come to a final decision in their discretion.

13. In that view of the matter also, the contention raised by the petitioner cannot be accepted. Evidently, the delimitation order has been passed after considering various aspects.

For all the above reasons, the writ petition fails and the same is dismissed. No costs.