
(2010) 08 KL CK 0113

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22804 of 2010 (A)

New Vikas Residents Association

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 243C, 243K, 243O, 243ZF
Delimitation Act, 1972 — Section 8, 9
Kerala Municipalities Act, 1994 — Section 11F, 12BB, 2, 69, 69(2A)
Panchayat Raj Act, 1994 — Section 10, 10(3A), 10A

Citation : (2010) 08 KL CK 0113

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

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; Murali Purushothaman, SC, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The petitioner is the Secretary of a Residents Association, who are aggrieved by the delimitation of certain wards of Alappuzha Municipality. The members of the residents Association were included earlier in Civil Station ward of Alappuzha Municipality. The area of operation of the Association takes in the Civil Station ward. It consists of 350 members. Presently, about 100 families of the Civil Station ward are proposed to be segregated from the said ward and are going to be annexed with Sakaria Bazar ward. Ext.P2 is the notification published u/s 69 of the Kerala Municipality Act. The petitioner Association raised an objection as per Ext.P3. It is contended that the geographical boundaries and natural boundaries have been violated. Ext.P5 is the final order passed by the Delimitation Commission which is under challenge in this writ petition. Relying upon the voters list of the different wards, it is pointed out that there is violation of Section 69 of the Act also.

2. The Delimitation Commission has filed a detailed statement as well as an additional statement. In the detailed statement, a preliminary objection has been

raised with regard to the maintainability of the writ petition relying upon Article 243-ZG(a) of the Constitution of India.

3. First I will consider the preliminary objection. Article 243-ZG(a) provides as follows:

243ZG. Bar to interfere by courts in electoral matters-

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 243ZF shall not be called in question in any court.

Under Section 69(2A) of the Kerala Municipality Act, 1994 as amended by Kerala Municipality (Amendment) Ordinance, 2010 reads as follows:

Every order with regard to the division of ward and determination of their boundaries issued under this section by the Delimitation Commission shall be published in the gazette and it shall have the force of law.

Section 70 of the Act provides that the validity of any law relating to the delimitation of wards or allotment of seats to such wards shall not be called in question in any court.

4. 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". In *Anugrah Narain Singh and Another Vs. State of U.P. and Others*, Article 243-ZG itself was considered, and it was held *inter alia*, that the bar of judicial review will apply.

5. 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, ".

6. 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.

7. 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.

8. In the light of the above, the preliminary objections raised by the Commission

is sustainable.

9. Herein, the question is whether the area occupied by the residents association should form a particular ward itself. It is explained by the Commission that the sanctioned strength of Municipality as notified by the Government of Kerala, is 52 wards having a population of 177029 as per 2001 census. The total number of residential buildings are 43272 with an average population of 3404 and an average of 832 residential buildings in each ward.

10. It is explained that Ext.P3 objection filed by the petitioner was enquired through the Joint Registrar of Co-operative Societies (General), Alappuzha. It was pointed out by the enquiry officer that if the objections are allowed, there will be much variation of population in Zachariah Bazar and in Civil Station wards. The position is explained in para 5 of the additional statement. Going by the present position, in ward No. 43, the assessed residential buildings are 840, whereas in ward No. 44, the same is 835. The assessed population is 3437 and 3416 respectively. If the changes as suggested by the petitioner are accepted, then the number of buildings will be respectively 765 and 910 in ward Nos. 43 and 44 respectively, whereas the population figure will be 3129 and 3722 in these two wards.

11. As far as possible, the population shall be maintained by the Commission by the average mark fixed, subject to permitted variations. Therefore, the exercise done by the Commission cannot be said to be in violation of Section 69 of the Act also.

For all the above reasons, I find no ground to interfere with the order of delimitation. The writ petition is accordingly dismissed. No costs.