

(2010) 08 KL CK 0185

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22927 of 2010 (M)

Thayyil Kumaran

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, 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 0185

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

Bench : Single Bench

Advocate : P.P. Jacob, 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 Valayam Grama Panchayat in Kozhikode District. Mainly, it is contended that the mandatory guidelines have been overlooked in the matter of discarding the cadastral map to be made available from the Information Kerala Mission. It is pointed out that the survey map prepared by the Survey Department was also not used for the purpose of delimitation and private map was used by the Secretary of the Panchayat. The first objection raised by the petitioner has been produced as Ext.P2 and Ext.P5 is the subsequent objection.

2. The Delimitation Commission has filed a detailed statement and an additional statement. In the said statement, a preliminary objection has been raised relying upon the bar of judicial review provided under Article 243-O(a) of the Constitution of India.

3. 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.

4. 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.

5. 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.

6. 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*, ".

7. 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.

8. Another decision to be noticed is the 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.

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

10. In the additional statement it is explained that as on the date for receipt of

objections, i.e. on 11.1.2010 six objections were received, which were enquired through the Asst. District Industries Officer, Taluk Industries Office, Vadakara who was the designated enquiry officer. On the basis of the enquiry report and the remarks thereon by the District Collector, the objectors were personally heard by the Commission on 10.3.2010 and an order was passed on 27.4.2010 after considering various points. It is further explained that the total number of wards in the Panchayat as notified by the Director of Panchayats is 14, having a population of 17549 as per 2001 census. There are a total number of 4033 residential buildings with an average population of 1254 and an average of 288 residential buildings in each ward.

11. It is further explained that for the purpose of delimitation, the Secretary of the Panchayat has not used cadastral map or the map prepared by the Department of Survey and Land Records. It is explained that in the absence of cadastral and survey maps, most of the Local Self Government Institutions in the State have prepared the map for the purpose of delimitation of constituencies based on the map approved by the Commission during 2005. It is further pointed out that apart from the map, all the details have been given in Annexures 1A, 2A, 3 and 5 of the delimitation order. Herein also, the map was prepared based on the one approved by the Delimitation Commission in the year 2005 and there is no factual change in the map now prepared by the Secretary of the Panchayat except the change that during 2005 there were only 13 constituencies and now it has been changed to 14.

12. In the light of the above explanation, I find no merit in the contentions raised by the petitioner on the merits of the matter also. It is evident that the objections were enquired through the enquiry officer and the delimitation order is based on the natural boundaries also.

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