

A DRAVIDA MUNNETRA KAZHAGAM (DMK)
v.
SECRETARY GOVERNORS SECRETARIAT AND ORS.
(IA No. 182868/2019)
B In
(Civil Appeal Nos. 5467-5469/2017)
DECEMBER 06, 2019

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

C *Constitution of India – Part IX – Arts.243-B, 243-C r/w 243-B(1), 243-O & 243-ZG – Lead applicant (in present IAs) is the appellant in C.A.Nos.5467-5469/17, wherein an order of the Madras High Court refusing to issue certain directions to the Tamil Nadu State Election Commission was challenged – It was claimed*

D *therein that the State Government was deliberately postponing elections; unconstitutionally altering constituencies and refusing to effect rotation for gaining undue political advantage – On 12.11.2019, the State Government issued notification dividing four existing districts of Tamil Nadu to create nine new districts – In view of deference to various Supreme Court orders, the State*

E *Election Commission on 02.12.2019 announced the Elections Programme for all Panchayats at the village, intermediate and district levels – Present IAs filed inter alia to strike down the said Notification and direction to conduct local body elections only after delimitation of the newly carved districts – Held: Constitutional*

F *object of Part IX, envisaging democratisation of grass-root level administration, cannot be effectively achieved unless the delimitation exercise for constitution of local bodies at all levels is properly undertaken – Such exercise in the State of Tamil Nadu must keep in view the criteria for delimitation of wards prescribed under the 2017 Regulations, which criteria must itself not be*

G *contrary to Art.243-C r/w Art.243-B(1) – Election process as notified on 02.12.2019, in respect of the newly constituted nine districts cannot be held unless fresh delimitation exercise in respect thereto is first completed – State Government cannot justify holding local body elections of these nine districts by relying upon Supreme Court’s order dated. 18.11.2019 as the said order itself mandates*

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notification of elections only after completing “all legal formalities” – Directions issued – Further, the only grievance raised in the main appeals was that the local body elections ought be held on the basis of the 2011 Census and not of 2001; and considering how the respondents have already used the 2011 Census while conducting the latest delimitation exercise (except in the newly re-constituted nine districts), these appeals are rendered infructuous – Tamil Nadu Panchayats (Second Amendment) Act, 2016 – Tamil Nadu Delimitation Commission Act, 2017 – Tamil Nadu Local Bodies Delimitation Regulations, 2017 – Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995 – r.6.

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Disposing of the IAs, the Court

HELD: 1.1 Before the election process could begin as per the State Election Commission’s Press Release dated 2nd December, 2019, the State of Tamil Nadu increased the number of districts from 31 to 39 and also restructured various talukas. However, with regard to posts of Chairman and Vice-Chairman of District Panchayat Councils, elections are still sought to be held only for 31 posts. As per Article 243-B, panchayats have to mandatorily be constituted in a State at the village, intermediate and district levels. Article 243-C requires the State, as far as is practicable, to maintain a similar ratio between the population residing within the territory of a particular panchayat and the number of seats allocated to it, across all panchayats in the State. Further, each panchayat must be divided into territorial constituencies and per Article 243-D, seats in proportion to their population must be reserved for Scheduled Castes and Scheduled Tribes in each panchayat. The constitutional object of Part IX cannot be effectively achieved unless the delimitation exercise for constitution of local bodies at all levels is properly undertaken. Such exercise in the State of Tamil Nadu must keep in view the criteria for delimitation of wards prescribed under the Tamil Nadu Local Bodies Delimitation Regulations, 2017 (formulated under the Tamil Nadu Delimitation Commission Act, 2017), which criteria must itself not be contrary to Article 243-C read with Article 243-B(1) of the Constitution. Noticing how at the completion of the delimitation process there were only 31 revenue districts, but despite a subsequent increase in

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- A number of districts to 39, no fresh delimitation exercise has been undertaken, it is clear that the State Government cannot fulfil the aforestated Constitutional mandate. There is no identified data elucidating population proportions and hence requisite reservation for Scheduled Castes and Scheduled Tribes cannot be provided for, both in re village panchayat wards or Chairman/ Vice-Chairman of District bodies. The election process as notified by the State Election Commission on 2nd December, 2019, in respect of the newly constituted nine districts cannot be held unless fresh delimitation exercise in respect thereto is first completed. The State Government cannot justify holding local body elections of these nine districts by relying upon Supreme Court's order dated 18th November, 2019 as the said order itself mandates notification of elections only after completing "all legal formalities". The contention of the respondents that the present proceedings amount to "calling in question an election" and hence not being maintainable in view of the express constitutional embargos of Articles 243-O and 243-ZG does not impress, for the present proceedings are only to further the expeditious completion of pre-requisites of a fair election. [Paras 10-14] [712-D-E-H; 713-A-G]

1.2 Directions:

- E a) The Respondent-authorities shall hold elections to all Panchayats at village, intermediate and district levels, except those in the nine reconstituted districts; b) The Respondents (including the Delimitation Commission) are directed to delimit the nine newly-constituted districts in accordance with law and thereafter hold elections for their panchayats at the village, intermediate and district levels within a period of four months; c) There shall be no legal impediment against holding elections for Panchayats at the village, intermediate and district levels for rest of the districts; d) State Election Commission shall notify elections for the panchayats at village, intermediate and district levels in respect of all districts except the nine re-constituted districts as per the details given in direction 'a'; e) While conducting elections, the respondents shall provide proportionate reservation at all levels, in accordance with the Rule 6 of Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules,1995. [Para 15] [714-E-H; 715-A-D]

1.3 The Advocate General of Tamil Nadu has also agreed to proceed with the election process as directed. Since, the only grievance raised in the main appeals was that the local body elections ought be held on the basis of the 2011 Census and not of 2001; and considering how the respondents have already used the 2011 Census while conducting the latest delimitation exercise (except in the newly re-constituted nine districts), these appeals have been rendered infructuous and are disposed of accordingly. [Paras 16, 17] [715-D-F]

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Election Commission of India v. Ashok Kumar and Others (2000) 8 SCC 216 : [2000] 3 Suppl. SCR 34
– relied on.

Case Law Reference

[2000] 3 Suppl. SCR 34 relied on Para 13

CIVIL APPELLATE/JURISDICTION : I.A. No. 182868 of 2019
in Civil Appeal Nos. 5467-5469 of 2017.

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From the Judgment and Order dated 21.09.2016 of the High Court of Judicature at Madras in Writ Petition (C) Nos. 23411, 23417 & 23418 of 2016

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With
M.A. No.2328 of 2019 in W.P.(C) No.1267 of 2018, IA Nos. 183503, 183515, 163332, 183506, 186721 and 186722, 185943 of 2019, Contempt Petition (C) Diary No.38969 of 2019 in W.P.(C) No.1267/ 2018, W.P.(C) Nos.1411, 1415, 1413, 1418, 1417, 1420 of 2019, Writ Petition (C) Diary No.43683 of 2019

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Vijay Narayan, AG, Ms. Narmadha Sampath, Balaji Srinivasan, AAGs, Dr. A.M. Singhvi, Kapil Sibal, Mukul Rohtagi, P.S. Narasimha, Aryama Sundaram, K.V. Vishwanathan, P. Wilson, Sr. Advs., Amit Anand Tiwari, Amit Bhandari, Shashwat Singh, Vivek Singh, Ms. Mary Mitzy, R. Neelakandan, M.P. Parthiban, D. Kumanan, Suvendu Suvasis Dash, K.V. Jagdishvaran, Ms. G. Indira, Ms. Rangoli Seth, Ashwani Kumar, Mrs. Vinitha, Thanga Durai, Vinodh Kanna B., Lenin Rajaseharan, M. Yogesh Kanna, S. Raja Rajeshwaran, R. Karthikeyan, Ms. Uma Prasuna Bachu, Arjun Singh, Nedunchallian, Rahul G. Tanwani, Ms. Sindoora VNL, Ms. Aditi Tripathi, Ms. Kanti, Sudhakaran R., Ms. Pallavi Sengupta, J. Arul Prakasam, Dr. Rajesh Pandey,

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- A R. Nilavazhayan, J. Suresh, Ms. Aswathi M.K., Gowtham Kumar, Ishan Bisht, Ms. Palak Mahajan, Ms. Ragini Pandey, Rahul Pratap, Advs. for the appearing parties.

The following Judgment of the Court was delivered:

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JUDGEMENT

1. These Interlocutory Applications have been filed seeking directions for compliance with the Constitutional mandate concerning elections to local bodies. The lead applicant, Dravida Munnetra Kazhagam (DMK), is appellant in the Civil Appeal Nos. 5467-5469 of 2017, wherein an order of the Madras High Court refusing to issue certain directions to the Tamil Nadu State Election Commission (“State Election Commission”) is under challenge before us. It is also the principal Opposition party in the Legislative Assembly of the State of Tamil Nadu and is a recognised State-party.
2. In the Civil Appeal DMK claimed that the party-in-power at the State level, the AIADMK, has deliberately been postponing elections; unconstitutionally been altering constituencies and refusing to effect rotation with the object of gaining undue political advantage. They have claimed that Articles 243-D and 243-T mandated that delimitation of constituencies be conducted after every decadal census and concomitant reservations be effected for Scheduled Castes and Scheduled Tribes on a ‘rotation’ basis. In so far as the Tamil Nadu Panchayats (Second Amendment) Act, 2016 allowed the next cycle of local elections in Tamil Nadu to be conducted as per the earlier 2001 Census, it contravened Constitutional provisions and was thus liable to be struck down.
3. The aforesated issues have, however, been rendered academic by constitution of a Delimitation Commission under the newly enacted Tamil Nadu Delimitation Commission Act, 2017. This Commission initiated an elaborate exercise of delimitation on 25th July, 2017 and eventually formulated a draft ward delimitation proposal on 20th September, 2017. Thereafter, written objections were invited from the public, various political parties and organisations between 20th December, 2017 and 18th January, 2018. After considering such objections/suggestions and the revised proposals received from District Delimitation Authorities, the Delimitation Commission sent its final

recommendation to the State Government on 31st August, 2018. A
Thereafter, a notification was issued by the State Government on 14th
December, 2018 whereby the wards newly delimited per the 2011
Census figures were notified.

4. Thereafter, on 20th February, 2019 the Delimitation B
Commission forwarded proposals for reservation, whereupon post
consideration, the State Government vide notifications dated 20th May,
2019, 21st May, 2019 and 24th May, 2019 notified reserved seats for
rural and urban local bodies in the State.

5. It is noteworthy that soon after on 12th November, 2019 the C
State Government issued a notification dividing four existing districts
of Tamil Nadu to create nine new districts. Vellore district was
trifurcated into the districts of Vellore, Tirupathur and Ranipet;
Kancheepuram was bifurcated into Kancheepuram and Chengalpet;
Villupuram was bifurcated into Villupuram and Kallakurichi; and
Tirunelveli was bifurcated into Tirunelveli and Tenkasi districts.
Resultantly, some talukas were also re-structured with certain revenue
villages either being added or removed. Para 7 of the aforesated
notification then reads as follows:

“7. The delimitation of the territorial wards of Village Panchayats, E
Panchayat Union and District Panchayats have already been
notified under the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu
Act 21 of 1994) and thereby the delimitation exercise for the
ensuing local body elections has already been completed.
Notwithstanding the notification to bifurcate the Districts, the F
process started already to conduct the ensuing Local Body
Elections will be continued as per the order of the Hon’ble
Supreme Court dated 17.07.2019 in W.P. (C) No. 1267/2018.
After the ensuing Local Body Elections, the process of
modification, if any, with regard to local bodies will be taken up G
by the Government.”

6. As is apparent from the above extract, there is a pointed H
reference to this Court’s order dated 17th July, 2019 in W.P.(C) No.
1267 of 2018. This Order was delivered in M.A. No. 2328 of 2019
which was filed by the State Election Commission and reads as under:

- A "On 2nd July, 2019, this Court had passed the following order:-
"The respondent No.1, the Tamil Nadu State Election Commission, shall file an affidavit within two weeks hence, indicating the time within which the delimitation exercise that is stated to be at an advance stage, will be completed and when elections to the local bodies can be held."
- B List the matter on 17th July, 2019.
Pursuant thereto, an affidavit dated 15th July, 2019, has been filed by the Secretary, Tamil Nadu State Election Commission.
- C We have perused the said affidavit and we are satisfied with the grounds mentioned therein, which explain the delay in completion of the delimitation exercise and in issuing the notification in respect of local bodies elections. We have also taken note of the fact that in paragraph 28, the Secretary of the State Election Commission has stated that the notification announcing the schedule of the election will be published in the last week of October, 2019.
- D In view of the aforesaid statement made before the Court in the affidavit filed by the Secretary of the State Election Commission, we permit the State authority to act in the manner as undertaken before the Court i.e. publish the election notification in the last week of October, 2019....."
- E 7. Thereafter this Court passed the following order on 18th November, 2019.
- F "**List on 13.12.2019, by which time we hope and expect that Notification will be issued after completing all legal formalities.**
- G Dr. Abhishek Manu Singhvi, learned Senior Counsel states that there are some connected matters, i.e., SLP(C) Nos. 28881-28883/2016 and batch.
- H List all the connected matters together before the appropriate Bench, after obtaining orders from Hon'ble the Chief Justice of India."
8. In purported deference to the above reproduced Orders, the State Election Commission on 2nd December, 2019 announced the Programme of Elections for all Panchayats at the village, intermediate and district levels, which is as follows:

PROGRAMME OF ELECTION

1.	Publication of public notice of election and commencement of receipt of nominations	06.12.2019
2.	Last date of making nominations	13.12.2019
3.	Scrutiny of nominations	16.12.2019
4.	Withdrawal of candidates	18.12.2019
5.	Dates of Poll Phase – I Phase - II	27.12.2019 30.12.2019
6.	Date of commencement of counting of votes	02.01.2020
7.	Date before which the election shall be completed	04.01.2020
8.	Date on which the first meeting of the newly elected ward members shall be held for assumption of office by taking oath or affirmation	06.01.2020
9.	Date of which the meeting of the ward members shall be held for the election of Vice-Presidents or Chairman and Vice-Chairman, as the case may be.	11.01.2020

9. The notified election programme further provides as follows:

“Posts for Direct Elections:

Direct election would be held to fill up the total of 1,18,974 posts in Rural Local bodies, out of which

- 655 Posts of Village Panchayat Ward members within 31 District Panchayats;
- 6,471 Posts of Panchayat Union Ward Members within 388 Panchayat Unions;
- 12,524 Posts of Village Panchayat Presidents and 99,324 posts of Village Panchayat Ward Members are included.

Political Party Based Elections and Non-political Party based Elections:

The election to the posts of Village Panchayat Presidents and Village Panchayat Ward Members will be as Non-Political Party based Elections; the election to the posts of District Panchayat Ward Members and Panchayat Union Ward Members will be as Political party based Election.

A Indirect Elections:

Indirect Elections to the following posts will be held on 11.01.2020 through the elected representatives of the local bodies.

B	Posts of Chairman of District Panchayat Council	31
	Posts of Vice-Chairman of District Panchayat Council	31
	Posts of Chairman of Panchayat Union Council	388
C	Posts of Vice-Chairman of Panchayat Union Council	388
	Posts of Vice-President of Village Panchayat President	12,524
		13,362

10. It thus emerges that before the election process could begin as per the State Election Commission's Press Release dated 2nd December, 2019, the State of Tamil Nadu increased the number of districts from 31 to 39 and also restructured various talukas. However, with regard to posts of Chairman and Vice-Chairman of District Panchayat Councils, elections are still sought to be held only for 31 posts. This resultant incongruity has prompted the appellants to file these applications with prayers to strike down the Notification dated 2nd December, 2019; hold elections for the entire State comprising all 39 Revenue Districts; and conduct such local body elections only after completion of all legal formalities i.e. after delimitation of the newly carved districts. A specific direction has also been prayed for, to compel the respondents to first carry out delimitation, reservation, rotation processes and fulfil all other legal requirements before notifying or conducting elections of any panchayat at the village, intermediate or district level.
11. Having heard learned counsel for the parties at a considerable length and after an indepth analysis of various Statutory provisions as well as the constitutional scheme under Part IX which envisages democratisation of grass-root level administration, we are of the view that, as per Article 243-B, panchayats have to mandatorily be constituted in a State at the village, intermediate and district levels. Article 243-C requires the State, as far as is practicable, to maintain a similar ratio between the population residing within the territory of a
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particular panchayat and the number of seats allocated to it, across all panchayats in the State. Further, each panchayat must be divided into territorial constituencies and per Article 243-D, seats in proportion to their population must be reserved for Scheduled Castes and Scheduled Tribes in each panchayat.

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12. It is thus clear that the constitutional object of Part IX cannot be effectively achieved unless the delimitation exercise for constitution of local bodies at all levels is properly undertaken. Such exercise in the State of Tamil Nadu must keep in view the criteria for delimitation of wards prescribed under the Tamil Nadu Local Bodies Delimitation Regulations, 2017 (formulated under the Tamil Nadu Delimitation Commission Act, 2017), which criteria must itself not be contrary to Article 243-C read with Article 243-B(1) of the Constitution.

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13. Noticing how at the completion of the delimitation process there were only 31 revenue districts, but despite a subsequent increase in number of districts to 39, no fresh delimitation exercise has been undertaken, it is clear that the State Government cannot fulfil the aforeslated Constitutional mandate. There is no identified data elucidating population proportions and hence requisite reservation for Scheduled Castes and Scheduled Tribes cannot be provided for, both in re village panchayat wards or Chairman/Vice-Chairman of District bodies. We hence have no doubt that the election process as notified by the State Election Commission on 2nd December, 2019, in respect of the newly constituted nine districts cannot be held unless fresh delimitation exercise in respect thereto is first completed. The State Government cannot justify holding local body elections of these nine districts by relying upon this Court's order dated 18th November, 2019 as the said order itself mandates notification of elections only after completing "all legal formalities".

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14. The contention of the respondents that the present proceedings amount to "calling in question an election" and hence not being maintainable in view of the express constitutional embargos of Articles 243-O and 243-ZG does not impress us for the present proceedings are only to further the expeditious completion of prerequisites of a fair election. Hence, the following ratio of a coordinate Bench in *Election Commission of India v. Ashok Kumar and Others* [2000 (8) SCC 216] squarely applies to the present case:

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- A “(2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.
- B (3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body been shown to have acted in breach of law.
- C (4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.”
15. For the reasons aforesated, these applications are allowed in part and disposed of with the following directions:
- E a. The Respondent-authorities shall hold elections to all Panchayats at village, intermediate and district levels, except those in the following nine reconstituted districts:
- i. Kancheepuram
 - ii. Chengalpattu
 - iii. Vellore
 - iv. Thirupathur
 - v. Ranipet
 - vi. Villupuram
 - vii. Kallakurichi
 - viii. Tirunelveli
 - ix. Tenkasi;
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- b. The Respondents (including the Delimitation Commission) are directed to delimit the nine newly-constituted districts in accordance with law and thereafter hold elections for their panchayats at the village, intermediate and district levels within a period of four months; A
- c. There shall be no legal impediment against holding elections for Panchayats at the village, intermediate and district levels for rest of the districts; B
- d. State Election Commission shall notify elections for the panchayats at village, intermediate and district levels in respect of all districts except the nine re-constituted districts as per the details given in direction 'a' above.; C
- e. While conducting elections, the respondents shall provide proportionate reservation at all levels, in accordance with the Rule 6 of Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995. D

16. In all fairness, we must note that the learned Advocate General of Tamil Nadu has also agreed to proceed with the election process as directed above.

17. Since, the only grievance raised in the main appeals was that the local body elections ought be held on the basis of the 2011 Census and not of 2001; and considering how the respondents have already used the 2011 Census while conducting the latest delimitation exercise (except in the newly re-constituted nine districts), these appeals have been rendered infructuous and are disposed of accordingly. E

18. All pending I.As. also stand disposed of accordingly. F