

Writ Petition (MD) No. 18725 of 2020

and

W.M.P. (MD) No. 15646 of 2020

N.KIRUBAKARAN, J.

and

B.PUGALENDHI, J.

(Order of the Court was passed by N.KIRUBAKARAN, J.)

It was 17th April, 1999, there was deep silence in the Parliament voting was over no confidence motion moved by Atal Bihari Vajpayee, headed NDA Government. Every body was looking at digital board. It showed 269 Yes and 270 No. Speaker G.M.Balayogi announced that confidence motion was defeated by one vote. Such was the importance of one vote in making or defeating a mighty Central Government in the largest democracy of the world.

“Can successful implementation of family planning programmes of the Central Government be put against the people of the State by taking away political representations in the Parliament?”

Yes, up to the year of 1962 the Tamil Nadu had 41 representations as Member of Parliament in Lok-Sabha, whereas, from 1967 onwards, the State has only 39 representatives as Members of Parliament, two less than the original number merely because the State Government successfully controlled the population and population growth by various measures.

2.Since population has been brought down by successfully implementing national programme for family planning, the political representations in the Parliament have been reduced from 41 to 39 , which is very unfair and unreasonable. Normally, a State Government has to be honoured and complimented for successfully implementing Central Government's policies and projects etc., and interests of such State cannot be adversely affected.

3. People of Tamil Nadu lost two representatives in the Lok-Sabha from the year 1967 onwards. In every election loss of two political representatives in the Parliament is not only confined to Tamil Nadu but also to Andhra Pradesh and a few other States. Those States which are unable to control population have been complimented with more representatives in Parliament as per the population of those States. Because of that two adverse things have happened, one is that the rights of the States which successfully implemented population control have been affected and the States whose population grew are credited with more people representatives. This issue has to be considered very seriously, especially, when the Indian population is more than 138 crores, next only to China and in all probabilities, in 2050, India would be the most populated country, leaving China in the second position. Population control is a must, otherwise, there will be acute shortage of natural resources, public amenities and people cannot lead healthy life.

4. Tamil Nadu had 41 parliamentary constituencies during 1962 election, which are as follows:-

S.No.	Constituency	S.No.	Constituency
1.	Madras North	21.	Coimbatore
2.	Madras South	22.	Pollachi
3.	Sriperumbudur	23.	Periyakulam
4.	Chengalpattu	24.	Madurai
5.	Tiruvallur	25.	Melur
6.	Vellore	26.	Dindigul
7.	Vandavasi	27.	Karur

S.No.	Constituency	S.No.	Constituency
8.	Tiruvannamalai	28.	Tiruchirapalli
9.	Tindivanam	29.	Perambalur
10.	Cuddalore	30.	Pudukkottai
11.	Chidambaram	31.	Kumbakonam
12.	Tirukoilur	32.	Mayuram
13.	Tiruppattur	33.	Nagapattinam
14.	Krishnagiri	34.	Thanjavur
15.	Salem	35.	Ramanathapuram
16.	Tiruchengode	36.	Aruppukkottai
17.	Namakkal	37.	Koilpatti
18.	Erode	38.	Tirunelveli
19.	Gobichettipalayam	39.	Tenkasi
20.	Nilgiris	40.	Tiruchendur
		41.	Nagercoil

From the above, it is evident that 41 Members of Parliament were elected from Tamil Nadu.

5. Delimitation Commissions were appointed as per Article 82 of the Constitution of India during the year 1963. Based on 1961 population census, delimitation of the parliamentary and assembly constituency order of 1965 was passed. In view of the reduction in the population in Tamil Nadu as stated above, parliamentary constituencies were reduced from 41 to 39, which are as follows:-

1. Tiruvallur (SC)
2. Chennai North
22. Dindigul
23. Karur

3. Chennai South
4. Chennai Central
5. Sriperumbudur
6. Kancheepuram (SC)
7. Arakkonam
8. Vellore
9. Krishnagiri
10. Dharmapuri
11. Tiruvannamalai
12. Arani
13. Viluppuram (SC)
14. Kallakurichi
15. Salem
16. Namakkal
17. Erode
18. Tiruppur
19. Nilgiris (SC)
20. Coimbatore
21. Pollachi
24. Tiruchirappalli
25. Perambalur
26. Cuddalore
27. Chidambaram (SC)
28. Mayiladuthurai
29. Nagapattinam (SC)
30. Thanjavur
31. Sivaganga
32. Madurai
33. Theni
34. Virudhunagar
35. Ramanathapuram
36. Thoothukkudi
37. Tenkasi (SC)
38. Tirunelveli
39. Kanniyakumari

6. It is not known as to whether any political party questioned about reduction in number of parliamentary constituencies. A political representation or a Member of Parliament is very valuable for a State, as evident from how late Atal Bihari Vajpayee led NDA Government was voted out of power by one vote in 1999. When one Member of Parliament vote itself was capable of toppling a Government, it is very shocking that Tamil Nadu lost 2 Members of Parliament because of successful implementation of birth control in the State.

7. When existing political representatives were reduced based on population count, for no fault of the State, the State should be compensated either by way of compensation or by way of additional representation in Rajya Sabha. The following general elections were held after reduction of 2 MPs from Tamil Nadu:-

(1) 1967, (2) 1971, (3) 1977, (4) 1980,
(5) 1984, (6) 1989, (7) 1991, (8) 1996,
(9) 1998, (10) 1999, (11) 2004, (12) 2009,
(13) 2014 and lastly (14) 2019.

Therefore, totally Tamil Nadu lost about 28 representatives in the above elections, which otherwise the State would have been entitled to.

8. As already stated, a Member of Parliament is capable of toppling the Government as proved during 1998-1999. Notionally, the contribution of a Member of Parliament in 5 years could be taken at least as Rs.200 crores, though it cannot be determined monetarily. Therefore for every elections Tamil Nadu should be compensated with a sum of Rs.400 crores for reduction of 2 political representatives. If that is so, the Tamil Nadu has to get the compensation for loss of 2 seats in 14 elections, viz., 28 seats, which amounts to approximately Rs.5,600 crores.

9. If notional value of the contribution of the Member of Parliament to the State as well as Parliament could not be compensated, the State, which loses the number of representations in Lok Sabha i.e, Members of Parliament, due to birth control, at least, the number of representatives in Rajya Sabha should be increased. In that way only, the Union Government could do justice to the States, which successfully implemented the birth control programmes as per the policy of the Central Government.

10. When the above important issue was resonating in the minds of the Court, the present public interest litigation has come up at the right time with regard to de-reservation of the Thenkasi Parliamentary constituency.

11. The Petitioner sought for Writ of Mandamus directing the First and Second Respondents to consider the Petitioner's representation dated 13.07.2020 and further direct the Respondents to convert Tenkasi Parliamentary Constituency in Tamil Nadu as General Constituency by enabling all the communities of the Society to be candidates in the upcoming election to uphold the spirit of the Constitution of India.

12. Mr. V. Rajiv Rufus, Learned Counsel for the Petitioner would contend that since 1964, the Thenkasi Parliamentary constituency right from its formation has remained as a reserved constituency for the past 56 years only enabling candidates from scheduled castes and scheduled tribes alone to contest and get elected to Parliament, denying the rights of the other sections of the society. He would also contend that the Petitioner is not against reservation of constituencies for scheduled castes and scheduled tribes and the same has to be done on rotation basis, so that reserving one constituency for years together could be avoided. However, keeping one constituency alone as a reserved constituency for a long time would definitely violate the rights of the other sections of the society to get themselves elected by contesting the elections. Therefore, the Petitioner already gave a representation on 13.07.2020 to the First and Second Respondents to convert the said Thenkasi constituency of Tamil Nadu as a general constituency. As it has not been considered, the Petitioner has approached this Court for a direction to consider the claim of the Petitioner positively.

13. Heard Mr. Rajiv Rufus, Learned Counsel for the Petitioner, Mrs. Victoria Gouri, Learned Counsel, who takes notice on behalf of the First and Second Respondents. Mr. Niranjan Rajagopal, Learned Counsel, who takes notice on behalf of

the Third Respondent. Mr. Muthu Geethaiyan, Learned Senior Panel Counsel for Central Government, who takes notice for the Fourth Respondent and Mr. Chella Pandian, Learned Counsel, who takes notice on behalf of the Fifth Respondent.

14. The reservation of constituencies for Scheduled Castes and Scheduled Tribes is governed by Article 330 and 332 of the Constitution of India. Article 332 deals with reservation of constituencies for Schedule Castes and Scheduled Tribes in State Assemblies which is extracted as follows:-

*332. (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, 3 [except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State 4 ***. (2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.*

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State. 5 [(3A) Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the readjustment, on the basis of the first census after the year 6 [2026], of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be,— (a) if all the seats in the Legislative Assembly of such State in existence on the date of coming into force of the Constitution (Fifty-seventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all the seats except one; (b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members

belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in the existing Assembly.] 1 [(3B) Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170, takes effect on the basis of the first census after the year 2 [2026], of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly.]

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State. (5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district 3.

*(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district 1 ***: 2 [Provided that for elections to the Legislative Assembly of the State of Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Bodoland Territorial Areas District, so notified, and existing prior to the constitution of Bodoland Territorial Areas District, shall be maintained.]”*

Based on the population only, the nature of constituency is determined. It is evident from the reply dated 07.09.2018 given by the Election Commission of India/Third Respondent to the Petitioner that under the provision read with sections 9 (1) (c) and 9 (1) (d) of the Delimitation Act, 2002, the seats in the assembly constituencies are determined. It is useful to extract the above provisions:-

"9. Delimitation of constituencies.—(1) The Commission shall, in the manner herein provided, then, distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State as readjusted on the basis of 1971 census to single-member territorial constituencies and delimit them on the basis of the census figures as ascertained, at the census held in the year 1 [2001], having regard to the provisions of the Constitution, the provisions of the Act specified in section 8 and the following provisions, namely:—

(a) all constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience; (b) every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency; (c) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and 1. Subs. by Act 3 of 2004, s. 4, for "1991"(w.e.f. 31-10-2003). 5 (d) constituencies in which seats are reserved for the Scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total is the largest. (2) The Commission shall— (a) publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of any associate member who desires publication thereof, in the Gazette of India and in the Official Gazettes of all the States concerned and also in such other manner as it thinks fit; (b) specify a date on or after which the proposals shall be further considered by it; (c) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places in each State as it thinks fit; and (d) thereafter by one or more orders determine— (i) the delimitation of parliamentary constituencies; and (ii) the delimitation of assembly constituencies, of each State.

The seats in the Legislative Assemblies of all States and Union Territories and the Parliament are accordingly reserved for scheduled castes and scheduled tribes by the then Delimitation Commission on the basis of Scheduled Caste population in the state as per the last census figures. As per Article 170, readjustment of constituencies would be done. However, the allocation of seats in the state assembly would remain frozen on the basis of 1971 census as per third Proviso (i) to Article 170 (3). Though the last census was made in 2001, the seats remain the same from 1971.

15. In *Meghraj Kothari v. Delimitation Commission and Others* reported in AIR 1967 SC 669, a resident of Daulatganj constituency, voter in Ujjain, Madhya Pradesh, challenged the notification dated 24.07.1964 which declared the Ujjain constituency as reserved for Scheduled Caste. The said Writ Petition was dismissed by the Madhya Pradesh High Court and the matter was carried over to the Hon'ble Supreme Court. The Hon'ble Supreme Court went into the details of reserved constituency, Articles 330, 332 and the provisions of Delimitation Act, 1962 and held that power of delimitation of the constituencies are governed by Article 327 and once orders of the Delimitation Commission is published, it would have effect as if they were the law made by the Parliament itself under Article 327 and the said law can no longer be agitated or challenged in the Court of law. Paragraphs 16, 19, 20, 30 and 31 are usefully extracted hereunder:

"16. In this case we are not, faced with that difficulty because the Constitution itself provides under Article 329(a) that any law relating to the delimitation of constituencies etc. made or purporting to be made under Article 327 shall not be called in question in any court. Therefore an order under Section 8 or 9 and published under Section 10(1) would not be saved merely because of the use of the expression "shall not be called in question in any court". But if by the publication of the order in the Gazette of India it is to be treated as law made under Article 327, Article 329 would prevent any investigation by any court of law.

...

19. An examination of Sections 8 and 9 of the Act shows that the matters therein dealt with were not to be subject to the scrutiny of any court of law. Section 8, which deals with the readjustment of the number of seats, shows that the Commission must proceed on the basis of the latest census figures and by order determine having regard to the provisions of Articles 81, 170, 330 and 332, the number of seats in the House of the People to be allocated to each State and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State. Similarly, it was the duty of the Commission under Section 9 to distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State to single member territorial constituencies and delimit them on the basis of the latest census figures having regard to the provisions of the Constitution and to the factors enumerated in clauses (a) to (d) of sub-section (1). Sub-section (2) of Section 9 shows that the work done under sub-section (1) was not to be final, but that the Commission (a) had to publish its proposals under sub-section (1) together with the dissenting proposals, if any, of an associate member, (b) to specify a date after which the proposals could be further considered by it, (c) to consider all objections and suggestions which may have been received before the date so specified, and for the purpose of such consideration, to hold public sittings at such place or places as it thought fit. It is only then that the Commission could by one or more order, determine the delimitation of Parliamentary constituencies as also of Assembly constituencies of each State.

...

20. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the Official Gazettes of the States concerned, these matters could no longer be reargued in a court of law. There seems to be very good reason

behind such a provision. If the orders made under Sections 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the Legislature that the orders under Sections 8 and 9 published under Section 10(1) were to be treated as law which was not to be questioned in any court.

...

30. Reference was also made by the majority Judges to the case of Edward Mills Co. Ltd. v. State of Ajmer [(1955) 1 SCR 735] where it was held that an order made under Section 94(3) of the Government of India Act, 1935, was, notwithstanding the repeal of the Government of India Act, 1935, by Article 395 of the Constitution, law in force. Finally, it was held by the majority of Judges (p. 315):

“We see no distinction in principle between the notification which was issued by the Governor-General in Edward Mills case, and the notification with which we are dealing in this case. This is not to say that every order issued by an executive authority has the force of law. If the order is purely administrative, or is not issued in exercise of any statutory authority it may not have the force of law. But where a general order is issued even by an executive authority which confers power exercisable under a statute, and which thereby in substance modifies or adds to the statute, such conferment of powers must be regarded as having the force of law.”

31. In this case it must be held that the order under Sections 8 and 9 published under Section 10(1) of the Delimitation Commission Act were to make a complete set of rules which would govern the readjustment of number of seats and the delimitation of constituencies.”

From the above, it is very clear that the objections regarding the delimitation can be entertained only within the time limit prescribed by the Delimitation Commission and

once the Delimitation notification has been published in the Gazette, it cannot be challenged before the Court of law.

16. The present Delimitation of Assembly and Parliamentary constituencies has been carried out as per the provisions of the Delimitation Act, 2008. With regard to the allocation of parliamentary and assembly constituencies are concerned, it has been done as per Section 8 of the Delimitation Act, 2002 which is usefully extracted hereunder:

"8. Readjustment of number of seats.—The Commission shall, having regard to the provisions of articles 81, 170, 330 and 332, and also, in relation to the Union territories, except National Capital Territory of Delhi, sections 3 and 39 of the Government of Union Territories Act, 1963 (20 of 1963) and in relation to the National Capital Territory of Delhi sub-clause (b) of clause (2) of article 239AA, by order, determine,

(a) on the basis of the census figures as ascertained at the census held in the year 1971 and subject to the provisions of section 4, the number of seats in the House of the People to be allocated to each State and determine on the basis of the census figures as ascertained at the [census held in the year 2001] the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State; and

(b) on the basis of the census figures as ascertained at the census held in the year 1971 and subject to the provisions of section 4, the total number of seats to be assigned to the Legislative Assembly of each State and determine on the basis of the census figures as ascertained at the [census held in the year 2001] the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State: Provided that the total number of seats assigned to the Legislative Assembly of any State under clause (b) shall be an integral multiple of the number of seats in the House of the People allocated to that State under clause (a)."

17. The Delimitation of the constituencies has been done as per Section 9 of the Delimitation Act, 2002 which reads as follows:

"Delimitation of constituencies.—

(1) The Commission shall, in the manner herein provided, then, distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State as readjusted on the basis of 1971 census to single-member territorial constituencies and delimit them on the basis of the census figures as ascertained, at the census held in the year [2001], having regard to the provisions of the Constitution, the provisions of the Act specified in section 8 and the following provisions, namely:—

(a) all constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience;

(b) every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency;

(c) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and

(d) constituencies in which seats are reserved for the Scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total is the largest.

(2) The Commission shall—

(a) publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of any associate member who desires publication thereof, in the Gazette of India and in the Official Gazettes of all the States concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which the proposals shall be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places in each State as it thinks fit; and

(d) thereafter by one or more orders determine—

(i) the delimitation of parliamentary constituencies; and

(ii) the delimitation of assembly constituencies, of each State."

Pursuant to the Delimitation, the Delimitation Commission had to publish the order under Section 10 of the Delimitation Act, 2002 which is usefully extracted hereunder:

"10. Publication of orders and their date of operation.—

(1) The Commission shall cause each of its orders made under section 8 or section 9 to be published in the Gazette of India and in the Official Gazettes of the States concerned and simultaneously cause such orders to be published at least in two vernacular newspapers and publicize on radio, television and other possible media available to the public and after such publication in the Official Gazettes of the States concerned, every District Election Officer shall cause to be affixed, the Gazette version of such orders relating to the area under his jurisdiction, on a conspicuous part of his office for public notice.

(2) Upon publication in the Gazette of India, every such order shall have the force of law and shall not be called in question in any court.

(3) As soon as may be after such publication, every such order shall be laid before the House of the People and the Legislative Assemblies of the States concerned.

(4) Subject to the provisions of sub-section (5), the readjustment of representation of the several territorial constituencies in the House of the People or in the Legislative Assembly of a State and the delimitation of those constituencies provided for in any such order shall apply in relation to every election to the House or to the Assembly, as the case may be, held after the publication in the Gazette of India of that order and shall so apply in

supersession of the provisions relating to such representation and delimitation contained in any other law for the time being in force or any order or notification issued under such law in so far as such representation and delimitation are inconsistent with the provisions of this Act: [Provided that nothing in this sub-section shall apply to the delimitation orders published in relation to the state of Jharkhand.]

(5) Nothing in this section shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the House or of the Assembly, as the case may be, existing on the date of publication in the Gazette of India of the final order or orders of the Commission relating to the delimitation of parliamentary constituencies or, as the case may be, of the assembly constituencies of that State and any bye-election to fill any vacancy in such House or in any such Assembly shall be held on the basis of the provisions of the laws and orders superseded by sub-section (4) as if the said provisions had not been superseded.

(6) The Commission shall endeavour to complete and publish each of its orders referred to in sub-section (1) in the manner provided in that sub-section, [within a period not later than 31st day of July, 2008] under section 3."

18. The Delimitation Commission on the basis of census figures 2001, invited objections under Sec.9 (2) and thereafter, published order under Section 10 of Delimitation Act 2002 and determined delimitation of Constituencies including reservation of Constituencies for Scheduled Castes and Scheduled Tribes to ensure reservation of the requisite number of reserved seats in each district in proportion to their population. Once orders were made by the Commission under Sections 8 and 9 of the Act and published in the gazette of India under section 10 of the Act, the same has to be treated as law made under Article 327 which cannot be questioned in any Court of law in view of Article 329 as decided by the Hon'ble Apex Court in the case of

Meghraj Kothari v. Delimitation Commission and Others reported in *AIR 1967 SC 669*.

19. The constituencies reserved for the Scheduled Caste and Scheduled Tribe will remain reserved till the next Delimitation exercise which is due to be taken up after the first census to be taken after the year 2026, as evident from the reply dated 07.09.2018 filed by the Election Commission. In view of the above provisions and delimitation done pursuant to the Delimitation Act, 2002, the reserved seat would remain as reserved seat till the next delimitation exercise.

20. It is a fact that the Tenkasi Parliamentary Constituency remains as a reserved constituency meant for Scheduled Caste and Scheduled Tribes alone for the past 56 years. 37-Tenkasi(SC) parliamentary constituency is having highest percentage of SC population viz., 21.52% and therefore, it has been reserved for scheduled castes(SC). The seats in the Legislative Assemblies of all States and Union Territories and the Parliament are accordingly reserved for scheduled castes and scheduled tribes by the then Delimitation Commission on the basis of census figures, 2001. In view of the above position, the rotation as explained in detail by the Election Commission of India in the reply dated 07.09.2018 the prayer sought for by the Petitioner cannot be sustained and the same is negatived.

21. From the above, it is clear that based on the Scheduled Caste population only the reserved constituency is decided. When highest percentage of Scheduled Caste(SC) population is available in the constituency, opportunity should be given to the Scheduled Caste(SC) candidates to get selected as Member of Legislative Assembly or Member of Parliament from those constituencies, where they have got more population. It is a disgusting fact that Scheduled Caste (SC) candidates are mostly not successful if they are fielded as candidates in the general constituency. Though the political parties

do lip service claiming themselves as the guardians of Scheduled Caste (SC), they lack moral courage to put up Scheduled Caste (SC) candidates in the general constituency. Unless in the general constituencies Scheduled Caste (SC) candidates are put up as candidates of political parties and win the election, reservation of constituencies for Scheduled Castes (SC) should continue.

22.The very purpose of reserving Scheduled Caste (SC) seat in Assembly or Parliament is to ensure that considerable number of scheduled caste candidates are elected as Members of Legislative Assembly and Members of Parliament to represent, as they lack opportunities to get elected.

23.It is categorically stated that in the reply dated 07.09.2018 given by the Election Commission of India that under the existing law there is no provision under the Constitution of India and Delimitation Act, 2002 to reserve seats on rotation basis.

24.In view of the above position, i.e, the rotation as explained in detail by the Election Commission of India in the reply dated 07.09.2018 the prayer sought for by the Petitioner cannot be sustained and the same is negatived.

25.However, the Government and the Election Commission of India should also ensure that not only the required number of Scheduled caste(SC) candidates are elected either in the State Assembly or to the Parliament alone, also to ensure that the provisions are made to reserve seats on rotation basis. Otherwise, as rightly pointed out by the Petitioner, keeping one constituency as reserved for so many years would definitely affect the rights of the other Sections. By having rotation, the scheduled caste(SC) candidates in other constituencies will also have the scheduled caste(SC) representatives in legislature. If they are elected from other constituencies on rotation basis, keeping one constituency as reserved constituency for a long time would be dispensed. The other constituencies even with lesser Scheduled caste(SC) population

could be made as reserved constituency. Though while rotating the constituency, the same number of representatives could be maintained so that the rights of the Scheduled caste population are not violated, it should be the duty of the Central Government as well as Election Commission to ensure that whenever delimitation exercise is done, efforts are to be taken to de-reserve the existing constituencies which are reserved constituencies for a long time and make the other constituencies which have got next highest Scheduled Caste population. If this kind of rotation is followed, definitely, there will not be any complaints of violation by any other section of people.

26. Population control cannot be a factor to decide the number of political representatives of the States in the Parliament. Those States, which failed to implement the birth control programmes were benefited with more political representatives in the Parliament whereas, the States, especially, southern States, namely Tamil Nadu and Andhra Pradesh, which successfully implemented the birth control programmes stood to lose 2 seats in each Parliament. Similarly State of Andhra Pradesh also lost 2 representatives /Members of Parliament in the Parliament and got the number of seats reduced from 42 to 40 in the Parliament. Therefore, whenever delimitation takes place, irrespective of the population of the States, no of seats should be frozen at the existing numbers or it should be enhanced to original level, viz., 41, as it was the position in the year 1962.

27. 1. Article 81 of the Constitution of India reads as follows:

81. Composition of the House of the People.—

(1) Subject to the provisions of article 331, the House of the People shall consist of—

(a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1),—

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State: Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.

(3) In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published: Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed, —

(i) for the purposes of sub-clause (a) of clause (2) and the proviso to that clause, as a reference to the 1971 census; and

(ii) for the purposes of sub-clause (b) of clause (2) as a reference to the 2001 census.

Each State gets seat in the Lok Sabha in proportion to its population. If the population of the State is more, there is likelihood of the State getting more political representation in the Parliament.

28. Article 82 is about readjustment of seat in the house after each census, which is usefully extracted as follows:

82. Readjustment after each census.—

Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine: Provided that such readjustment

shall not affect representation in the House of the People until the dissolution of the then existing House:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust—

(i) the allocation of seats in the House of People to the States as readjusted on the basis of the 1971 census; and

(ii) the division of each State into territorial constituencies as may be readjusted on the basis of the 2001 census, under this article.

29. After each census, the allocation of the seats in the house of the people to the State would be done. Similarly, the division of each State into territorial constituencies would be adjusted. As per 42nd amendment enacted in the year 1976, suspending the revision of seats until after 2001 census. By 84th amendment passed in the year 2002, the freezing of seats is extended until the next decennial census after 2026. The said census will take place in 2031. Hence, the population figures obtained through 2031 census will decide about the number of the Parliamentary seats, each State would get.

30. Though in democracy one person one vote is the basis, if that is followed, the States which could not control population growth would have more representation in Parliament and the States like Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh would get more seats, whereas the southern States, which are able to control the population growth would get lesser number of Parliamentary constituencies, thereby lowering the political power of the States.

31. The States have been reorganised on linguistic basis as per the States Reorganisation Act, 1956. India is a multi religious, multi racial and multi linguistic

country. Therefore, the powers should be distributed equally and there should be a balance of powers. The distribution of Parliamentary Constituencies would be based on future census to be conducted in 2031 which would be a risky and dangerous one, as hitherto it was avoided from 1971 onwards. In any event, it is appropriate to the Central Government, maintaining the same number of MPs allotted to each State and in case there is enhancement of seat in respect of thickly populated States, in the same proportion, the number of seats for the States which have controlled population should also be increased, otherwise the bargaining power of the States which controlled the population will be weakened.

32.As per the East Asia Forum Report, in 2050, India's population is projected to be 1.69 billion, more than that of China which is estimated to be 1.31 billion in the same year. Current number of Lok Sabha seats is 543, which is based on the delimitation carried out on the basis of 1971. During 1952 election the number of MPs were 489. In 1957 and 1962 election the Lok Sabha had 494 seats and the number of seats remains 542 until 2004 elections, based on the population census of 1971.

33.After passing of the 84th amendment, the Delimitation Commission was last formed in 2002 under the chairmanship of Mr.Justice Kuldip Singh. However, due to ban on the increase in number seats, the Commission only redrew the boundaries of the already existing constituencies and the number of constituencies 543 remain the same. India's population almost doubled in the last five decades and there is a problem of malapportionment of the electorate. In Tamil Nadu 1.8 billion people would elect a MP whereas 3 Million people will would for a MP in Uttar Pradesh. Though there may be malapportionment of electorate, it is appropriate in the interest of the nation to maintain the very same number of MPs. If there is any change in the number of constituencies, it should not anyway over the political bargaining power of any State, which successfully implemented the population control policy.

34. As the issue of reduction of parliamentary constituencies in Tamil Nadu, the political parties which contest the elections are necessary parties. Therefore, this Court, *suo motu*, impleads

1. DMK, Rep. by its General Secretary,
'Anna Arivalayam',
No.268-269, Anna Salai,
Teynampet, Chennai-600 018.
2. AIADMK, Rep. by its General Secretary,
No.275, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014.
3. Indian Congress Party,
Rep. by its General Secretary
No. 24, Akbar Road
New Delhi – 110 011.
4. BJP, Rep. by its General Secretary
No.11, Ashoka Road
New Delhi – 110 001.
5. PMK, Rep. by its General Secretary
Tindivanam,
Villupuram District, Chennai – 604 001.
6. CPI, Rep. by its General Secretary
Ajoy Bhawan, Kotla Marg,
New Delhi – 110 002.
7. CPM, Rep. by its General Secretary
A.K.Gopalan Bhawan,
Nos.27-29, Bhai Vir Singh Marg (Gole Market)
New Delhi – 110 001.

8. MDMK, Rep. by its General Secretary

'Thayagam', No. 141,

Rukmani Lakshmi Pathi Salai,

Egmore, Chennai – 600 008.

9. VCK, Rep. by its General Secretary

No.16, Chinnaiah Street,

T.Nagar, Chennai – 600 017.

10. Muslim League, Rep. by its General Secretary

No.40, 33, Marakayar Street,

Seethakadi Nagar

George Town, Chennai – 600 001.

as Respondents in this Writ Petition.

35. As the Writ Petition has been filed as Public Interest Litigation, while negating the prayer sought for, this Court raises the following queries *suo motu* in the interest of public for the reasons stated above:-

1. Could the rights of State of Tamil Nadu and similarly placed States could be violated by reduction in number of Members of Parliament who could be elected from the State for successfully implementing birth control programmes thereby reducing the population of the State?

2. Could the States, which could not successfully implement population control programmes, be benefited with more political representatives in the Parliament?

3. Why not this Court prohibit the Respondents from further reducing number of Parliament seats from Tamil Nadu, based on future census as

per population as growth of population has been contained, when the freezing of seats come to an end in 2026 ?

4. Why not the Respondents pay a sum of Rs.200 crores valuing notionally of the services / contribution made by each Member of Parliament to the State ?

5. Why not Central Government pay a sum of Rs.5600 crores as Tamil Nadu lost 28 representatives in the past from 1962 onwards in 14 elections?

6. Why not the Respondents restore 41 MP seats to State which was there till 1962 general elections as it lost 2 Members of Parliament due to control of population from 1967 general election onwards ?

7. Why not the Central Government come forward with a proposal that those States which effectively control the population in their respective States would be given equal number of seats in Rajya Sabha in lieu of reduction in number of Lok Sabha seats ?

8. Why not Article 81 of the Constitution be amended to maintain the same number of parliamentary constituencies irrespective of change in the population of respective States ?

36. Mrs. Victoria Gouri, Learned Counsel takes notice on behalf of the First and Second Respondents. Mr. Niranjan Rajagopal, Learned Counsel takes notice on behalf of the Third Respondent. Mr. Muthu Geethaiyan, Learned Counsel takes notice for the Fourth Respondent, Mr.R.Suresh Kumar, Learned Government Advocate takes notice on behalf of the Fifth Respondent. Notice to the newly impleaded Respondents

returnable in four weeks. Private notice is also permitted. The Respondents shall answer to the queries raised by four weeks.

Call the matter after four weeks.

[N.K.K., J.] [B.P., J.]

17.08.2021

N.KIRUBAKARAN, J.
and
B.PUGALENTHI, J.

Writ Petition (MD) No. 18725 of 2020
and
W.M.P. (MD) No. 15646 of 2020

Dated : 17.08.2021