

(2023) 04 CAL CK 0019
In the Calcutta High Court
Case No : WPA No. 2047, 27716 Of 2023

Abdul Kafil

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227, 243, 243C, 243C(2), 243K, 243O, 243ZA, 243ZA(1), 243ZG, 243ZG(a), 243ZG(b), 329
West Bengal Panchayat Election Rules, 2006 — Rule 22, 22(1), 22(1)(a), 22(1)(b), 22(1)(c), 23(4)
West Bengal Panchayat Act, 1973 — Section 3(1), 3(3), 3(3)(c), 4(2), 49(2)
West Bengal Panchayat Elections Act, 2003 — Section 12(ii), 13

Citation : (2023) 04 CAL CK 0019

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Shamim Ahammed, Arka Maiti, Ambiya Khatun, Md. Galib, Kapil Guha, Srijan Nayak, Rituparna Maitra

Final Decision : Dismissed

Judgement

Shampa Sarkar, J

1. Although, there were some factual differences in the two writ petitions, but as a common challenge had been thrown to the manner in which the District Panchayat Election Officer had proceeded with the discharge of his functions under rule 22 of the West Bengal Panchayat Election Rules, 2006 (for short Election Rules) and had issued the final notification in Form A1 of the Election Rules, the petitions were heard together.

2. All factual and legal aspects raised by the petitioners in the two writ petitions have been dealt with in this judgment and disposed of analogously.

3. WPA 27716 of 2022 was filed by a resident and a voter of the Domohana-XXII constituency, under the Domohana Gram Panchayat. He was aggrieved by the merger of two polling stations into one constituency. Challenging the draft

notification dated October 19, 2022, the petitioner filed an objection before the District Panchayat Election Officer. A specific objection was raised to the effect that while in all other constituencies, one seat per 700 to 800 voters had been allowed in the said gram panchayat, but in case of Domohana-XXII, 94 Magnavita FPS having 816 voters and 95 Magnavita having 768 voters were clubbed together and one seat was allotted for 1584 voters. Such indiscriminate and arbitrary clubbing of the two polling stations into one, was contrary to the West Bengal Panchayat Act, 1973 (for short Panchayat Act) read with West Bengal Panchayat Elections Act, 2003 (for short the Elections Act) and the rules framed thereunder. A comparison was drawn between Dakshin Kochra FPS and Madhya Kochra SSK which were delimited into two separate constituencies, i.e., Domohana-XI and Domohana-XII. Similarly, 89 Dangi FPS Room No.1 and 90 Dangi FPS Room No.2 were delimited to Domohana-XVIII and Domohana-XIX which had 829 and 726 voters, respectively.

4. According to the petitioner, 94 and 95 Magnavita should be delimited into two separate constituencies, so that each could be represented by one elected representative.

5. The petitioners were called for a hearing, but it is alleged that the authority published the final notification on November 25, 2022 without dealing with the objections raised by the petitioner. Hence, the writ petition was filed for a direction upon the authority to alter the delimitation of Domohana-XXII Gram Panchayat, upon setting aside the final notification dated November 25, 2022. A further direction upon the prescribed authority to delimit Domohana-XXII constituency by separating Magnavita 94 and 95 into distinct constituencies, was sought.

6. WPA 2047 of 2023 was filed by a voter of Domohana-XXII constituency inter alia, alleging that although some of the voters had raised an objection with regard to the delimitation of the constituency and arbitrary clubbing of Magnavita 94 and 95 into a single constituency, the District Panchayat Election Officer issued the final notification without paying any heed to the demand of the people.

7. A prayer had been made to issue a mandamus upon the state government to divide Domohana Gram Panchayat into two gram panchayats in terms of Section 3(3)(c) of the Panchayat Act. Further prayers, similar to the one made in WPA 27716 of 2022, that is, mandamus upon the prescribed authority to delimit Domohana-XXII into two separate constituencies upon setting aside the final notification dated November 25, 2022, was also made.

8. Mr. Shamim Ahammed, learned Advocate appearing on behalf of the petitioner in both the writ petitions submitted that there were several stages in the entire process of delimitation and the prescribed authority ought to have acted within the four corners of the statute and the rules framed thereunder. Reference was made to Section 3(1) of the Panchayat Act by which the state government had been empowered to declare by a notification, any mauza or part of a mauza or

group of contiguous mauzas or parts thereof, as 'gram'. The specific name of the gram including the local limits of such gram were to be specified in the notification.

9. Learned Advocate submitted that the state government was empowered to divide the area of a gram, so as to constitute two or more grams. Each of such gram would have its own gram panchayat. As the voting population of Domohana Gram Panchayat was relatively high and seats/members in the gram panchayat was to be limited to maximum of 30 in terms of Section 4(2) of the Panchayat Act, the only option left for the respondents was to divide Domohana Gram Panchayat into two separate grams in order to constitute two different gram panchayats. The exercise of delimitation under Section 12(ii) of the Elections Act was fallacious and contrary to the purpose of the said Act. The voters were entitled to have equal representation in the gram panchayat from their respective constituencies and the seats were to be distributed evenly for each constituency. Clubbing or merger of 94 Magnavita and 95 Magnavita was violative of Section 12(ii) of the Elections Act and rule 22 of the Election Rules. Allegation was that the state respondents in failing to create two separate grams by dividing Domohana Gram Panchayat in terms of Section 3(3)(c) of the Panchayat Act, had denied the voters their democratic right to send up their elected member to the gram panchayat. Such unequal distribution of the seats qua the voting population was contrary to the constitutional mandate.

10. Learned Advocate referred to Article 243-C of the Constitution which mandated that the ratio between the population of the territorial area of the gram panchayat at any level and the number of seats in such panchayat to be filled up by election, so far as practicable, should remain the same. The Elections Act was promulgated to provide the method of holding election and laid down the steps that should be taken by the prescribed authority for the purpose of holding panchayat elections in the State of West Bengal. The Elections Act also provided for all other election related issues including settlement of disputes and redressal of grievances of the voters. The Election Rules elaborately provided the mechanism for the entire process of election. From the stage of preparation of electoral roles, delimitation of constituencies, reservation of seats, filing of nominations, method of voting by EVM machines, counting of votes and other miscellaneous matters had been prescribed by the rules. According to learned Advocate, all the above-mentioned provisions were in consonance with the constitutional mandate under Article 243-C of the Constitution of India.

11. Learned Advocate referred to Section 12(ii) of the Elections Act and submitted that fixing the seats in the ratio of one member for every 900 voters and one additional member for every fraction thereof, was the legal requirement. Deviation from such calculation did not subscribe to the statutory provision. One seat/member for 1584 voters, in case of Domohana - XXII was contrary to the statute and also the provisions of Article 243-C of the Constitution of India. The Constitution provided that each panchayat area should be divided into territorial

constituencies, in such a manner that the ratio between the population of each constituency and the number of seats allotted to it, would so far as practicable, be the same throughout the panchayat area. By referring to the chart annexed to the writ petition, learned Advocate demonstrated that 94 Magnavita and 95 Magnavita were clubbed together as a single constituency having approximately 1584 voters. Whereas, 81 Dakshin Kochra FPS and 82 Madhya Kochra SSK had 841 and 749 voters respectively, but separate constituencies by way of delimitation as Domohana-XI and Domohana-XII, had been created.

12. Similar reference was also made to some other constituencies which had been created within Domohana Gram Panchayat. According to learned Advocate, the laws dealing with constitution of gram panchayats and elections of the said gram panchayats, did not permit merger of polling stations to form a single constituency, without maintaining the statutory requirement of one seat per 900 voters. There was apparent discrimination in the exercise of the work of delimitation. Constituencies having more than 1500 voters were allotted a single seat and large number of voters were represented by a single member. In other cases, constituencies having voting population ranging from 700 to 1200, were also being represented by one member. Such arbitrary creation of constituencies not only resulted in denial of democratic rights of the voters to elect their member to the gram panchayat in the ratio of one man : one vote, but also deprived the voters of having equal representation in the gram panchayat. Further contention was that an elected member would not be able to give his optimum service to such a large number of voters within such a large constituency. Constituencies having around 700 to 800 voters would be better served and looked after by their elected representative. Execution of projects, implementation of schemes and infrastructural developments would be more effective and smooth in a smaller constituency. It would be more convenient for the elected members to manage control and administer a constituency with less number of voters.

13. While concluding his argument, Mr. Ahammed submitted that the only option in this case was creation of a separate gram by the state government by dividing Domohana. The number of voters in the existing 'gram' exceeded 34000 and allocation of 30 seats to such a largely populated gram panchayat, was not possible. The seat-versus-voters ratio was imbalanced and contrary to the statutory and constitutional mandate. The maximum limit of 30 seats in a gram panchayat, could not be applied in case of large villages. The statutory provision of one member per 900 voters could not be adhered to, due to increase in the voting population over the years. Section 13 of the Elections Act was also referred in order to press the point that as a maximum of two seats could be allotted to a single constituency, at least two seats/members should have been allotted to Domohona XXII, in the alternative.

14. On the point of maintainability, reference was made to the decision in Anugrah Narain Singh and anr. vs. State of U.P. and ors. reported in (1996) 6

SCC 303. Mr. Ahammed submitted that after publication of the election notification, challenge could not be made to the election process by filing a writ petition. Until then, the writ court could exercise the power of judicial review to ascertain whether the allocation of seats were in accordance with the provisions of the Panchayat Act, the Elections Act and the Election Rules. When the election was imminent or well under way, the bar would operate and the Court should not stop an election on the plea of one or two individuals. Learned Advocate further contended that as the Delimitation Commission Act was not under challenge in the writ petitions, the constitutional embargo in Article 243-O, would not be applicable in this case. The notification dated November 25, 2022 did not have the force of law, but the same was an executive action and the writ court ought to interfere with the same and determine whether the allocation of seats were in conformity with the provisions of the Elections Act and Election Rules.

15. Referring to the decision in *Dravida Munnetra Kazhagam (DMK) vs. Secretary Governor's Secretariat and ors.* reported in (2020) 6 SCC 548, Mr. Ahammed submitted that the Hon'ble Apex Court had observed that as far as practicable, the state should maintain a ratio between the population and the number of seats allotted to a territorial area. The exercise of delimitation for constitution of local bodies should be properly undertaken and the proportionality should be maintained in the manner prescribed by law. Inaction or failure on the part of the prescribed authority would itself, be contrary to Article 243 read with Article 243-C(2) of the Constitution. Relying on the decision of the Bombay High Court in *Kamalakar Bapurao Kulkarni and ors. vs. Yeola Municipal Council Yeola and ors.* reported in 1984 SCC OnLine Bom 116, Mr. Ahammed submitted that if an executive action of an authority under a particular statute passed by the legislature was brought in question before the writ Court, it was perfectly legitimate for the Court to exercise jurisdiction under Article 226 of the Constitution and set aside the order impugned by giving appropriate reasons. Reliance was also placed on *Adi Saiva Sivachariyargal Nala Sangam and ors. vs. Government of Tamil Nadu and anr.* reported in (2016) 2 SCC 725, in support of the contention that even on a well-founded apprehension, a writ petition would be maintainable. The petitioner was not required to wait till the actual prejudice occurred, in order to move the Court. In this case, unequal distribution of seats amongst voters without maintaining the proportionality mandated under the constitution gave rise to a reasonable apprehension that the voters of Domohana XXII would be deprived of getting the optimum benefit from the service of their elected member who would not be able to cater to the needs of such a large population.

16. Mr. Srijan Nayak and Mr. Galib, learned Advocates appeared on behalf of the prescribed authority and opposed the respective writ petitions. The affidavit-in-opposition filed in WPA 27716 of 2022 was adopted by Mr. Galib in WPA 2047 of 2023.

17. The contention of Mr. Galib was that mandamus could not be issued in the

absence of any pleading as to how the petitioner's fundamental right or legal right had been infringed. The averments in the writ petition were vague. Baseless and omnibus criticism of the final notification would not give rise to a cause of action.

18. Mr. Galib referred to the writ rules of the High Court and submitted that the petitioner also failed to demand justice prior to institution of the proceedings before the Court. Learned Advocate urged that the writ petition No. WPA 2047 of 2023, should be dismissed as not maintainable.

19. Learned Advocate referred to the decision in *Dalmia Cement (Bharat) Limited vs. State of Tamil Nadu and anr.* reported in (2014) 2 SCC 279, and submitted that inadequacy of pleadings and absence of relevant particulars would lead to dismissal of the writ petitions. Referring to the decisions in *Mani Subrat Jain and ors. vs. State of Haryana and ors.* reported in (1977) 1 SCC 486, *Boddula Krishnaiah and anr. vs. State Election Commissioner, A.P. and ors.* reported in (1996) 3 SCC 416, *Maganbhai Ishwarbhai Patel Etc. vs. Union of India and anr.* reported in (1970) 3 SCC 400 and *Census Commissioner and ors. vs. R. Krishnamurthy* reported in (2015) 2 SCC 796, Mr. Galib reiterated that mandamus could not be issued unless the petitioner proved that he had a legally enforceable right and had suffered a serious prejudice at the hands of the prescribed authority. Mr. Galib referred to *Boddula Krishnaiah (supra)* and submitted that except on the limited ground that delimitation had been effected and finally notified without either inviting objections to the draft notification or without hearing the parties who raised objections to the draft notification, a writ petition should not be entertained.

20. Countering Mr. Ahammed's contention that Domohana Gram should have been bifurcated into two 'grams' so that two gram panchayats could be created to ensure equal representation from all the constituencies, Mr. Galib submitted that creation of two "gram" under Section 3(3)(c) was a policy decision and mandamus could not be issued directing the state to create separate villages.

21. Next, Mr. Galib contended that delimitation was an integral part of the election process and Article 243-O was a complete bar. The issue of merger of polling stations 94 and 95 Magnavita, to form Domohana-XXII constituency, was a part of the election process and the court should exercise judicial restraint. Learned Advocate submitted that the total number of voters in Domohana Gram Panchayat was 34627, which divided by 900 gave the number of members as 38.47. Fraction of 0.47 was taken as an 'additional one' by applying the formula under Section 12(ii) of the Elections Act. Thus 39 seats were to be allotted to the constituencies under the Domohana Gram Panchayat. Section 4(2) of the Panchayat Act provided that the maximum seats should be 30. Delimitation of constituencies was to be done on the basis of rule 22(1) of the Election Rules. Rule 22(1)(a) provided that the prescribed authority was to divide the area of a gram into constituencies each with contiguous area on the basis of the number of seats determined under Section 12(ii) of the Elections Act. The number of

members/seats determined under Section 12(ii) was 38.47. The same was required to be reduced to 30 and allotted to constituencies upon division of the entire gram into constituencies by taking into consideration recognizable units like paras, localities, neighbour-hoods, bustees or colonies. The prescribed authority was to assign consecutive serial numbers to all such constituencies of the gram panchayat following the sequence of the numbers assigned to the Legislative Assembly's polling stations comprising such constituencies. Domohana Gram Panchayat had 37 polling stations under Assembly Constituency No. 32, that is, from polling station No.67 to 103. In terms of Section 4(2) of the Panchayat Act, Section 12(ii) of the Elections Act and Rules 22(1)(a), 22(1)(b) and 22(1)(c) of the Election Rules of 2006 read with the State Election Commission's order dated July 25, 2022, some of the polling stations were required to be merged so that 39 seats could be reduced to 30 and adjusted against 37 polling stations, by creating constituencies. Upon considering the number of voters, the geographical location with contiguous areas and the location of the polling booths, the merger were done. The polling booths in the same premises were merged to create a single constituency.

22. It was urged that Domohana-1 constituency was created by merging polling stations No.32/67 and 32/68 and the basis for the merger was that both the polling booths were situated within the same school premises in two separate rooms. The total number of voters was 1520. A similar merger was made in case of polling stations 32/74 and 32/75 to create Domohana-VI constituency and the polling station for both were Haldibari MSK Room No.1 and Room No.2. Such procedure was also followed for assembly polling stations No.32/79 and 32/80 which were merged to form Domohana-X and the booths were situated at the same premises, namely, Uttar Kochra FP School Room No.1 and Room No.2. Similarly, polling stations 32/94 and 32/95 were merged to create Domohana-XXII constituency. The polling station was in the same premises, namely, Magnavita FPS Room No.1 and Room No. 2. There had been no discrimination or arbitrariness in the process. The prescribed authority had acted within the four corners of the statute and the merger was the only reasonable way to reduce 39 seats to 30 seats and to distribute the 30 seats amongst 37 Assembly polling stations.

23. The court proceeds to decide the issues raised by the parties. A three Judges Bench of the Hon'ble Apex Court in *State of Goa v. Fouziya Imtiaz Shaikh*, reported in (2021) 8 SCC 401, held as follows:-

"68.1. Under Article 243-ZG(b), no election to any municipality can be called in question except by an election petition presented to a Tribunal as is provided by or under any law made by the legislature of a State. This would mean that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non obstante clause contained in Article 243-ZG debarring the writ court under Articles 226 and 227 from interfering once the election process has begun until it is over. The constitutional bar operates

only during this period. It is therefore a matter of discretion exercisable by a writ court as to whether an interference is called for when the electoral process is "imminent" i.e the notification for elections is yet to be announced.

68.5. Judicial review of a State Election Commission's order is available on grounds of review of administrative orders. Here again, the writ court must adopt a hands-off policy while the election process is on and interfere either before the process commences or after such process is completed unless interfering with such order subserves and facilitates the progress of the election.

68.7. The bar contained in Article 243-ZG(a) mandates that there be a judicial hands-off of the writ court or any court in questioning the validity of any law relating to delimitation of constituency or allotment of seats to such constituency made or purporting to be made under Article 243-ZA. This is by virtue of the non obstante clause contained in Article 243-ZG. The statutory provisions dealing with delimitation and allotment of seats cannot therefore be questioned in any court. However, orders made under such statutory provisions can be questioned in courts provided the statute concerned does not give such orders the status of a statutory provision."

24. The Hon'ble Apex Court held that from the date of notification of election till the date of declaration of result, a judicial hands-off was mandated by the non obstante clause contained in the Constitution of India. The law debarred the writ court from interfering once the election process had begun and until the same was over. Moreover, validity of the law relating to delimitation and allotment of seats could not be called in question in any court. It was therefore, a matter of discretion of a writ court whether to exercise the power of judicial review at a stage when the election was imminent, but the notification for elections was yet to be published.

25. In case of elections to gram panchayats also, a similar non obstante clause has been made under Article 243-O of the Constitution of India. A bar on the interference by the writ court in respect of electoral matters and/or on the question of validity of any law relating to delimitation of the constituencies or allotment of seats to constituencies made or purported to be made under Article 243-K, has been imposed. No election to any panchayat could be called in question, except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State. In this case, the State of West Bengal has promulgated the Elections Act.

26. Here, the final notification under Form A1 issued under Rule 23(4) of the Election Rules had been called in question before a writ court, at a juncture, when the notification for the Panchayat Elections, 2023 had not been published. The writ court is not debarred completely from exercising its power of judicial review as the notification for the 2023 panchayat election has not been published. The writ court has a discretion whether or not to entertain the writ petition. Such discretion is to be exercised sparingly and only under exceptional

circumstances. Any and every challenge to an election process including the question of delimitation, cannot be entertained by a writ court. The discretion has to be exercised judiciously and with restraint. The publication of the notification under Form A-1 dated November 25, 2022 was an executive action. Such action can only be tested on the grounds of illegality, irrationality and procedural impropriety.

27. In the matter of Mohinder Singh Gill and anr. vs. Chief Election Commissioner and ors. reported in AIR 1978 SC 851, the Hon'ble Apex Court held as follows:-

"25. **** There is a non obstante clause in Article 329 and, therefore, Article 226 stands pushed out where the dispute takes the form of calling in question an election, except in special situations pointed at but left unexplored in Ponnuswami."

28. Although the petitioner in WPA 2047 of 2023 had not filed his objection to the draft notification, the petitioners and other villagers in WPA 27716 of 2022, had availed of their statutory remedy by filing their objection. They appeared at the hearing before the prescribed authority, prior to the publication of the final notification in Form A1.

29. This Court now ventures to determine whether exceptional circumstances had been made out by the petitioners which would warrant interference by the Court in exercise of power of judicial review, especially when the panchayat election is imminent, although the election notification had not been published. There is also a statutory remedy available under the Elections Act. Delimitation is one of the steps in the process of conducting an election.

30. The relevant provisions of the laws applicable to such process and relevant for this case, are quoted below:-

Section 4(2) of the West Bengal Panchayat Act states as follows:-

"Section 4. Gram Panchayat and its constitution.-

.....

(2) Persons whose names are included in the electoral roll prepared in accordance with such rules as may be made by the State Government in this behalf and in force on such date as the State Election Commissioner may declare for the purpose of an election pertaining to the area comprised in the Gram, shall elect by secret ballot at such time and in such manner as may be prescribed, from among themselves such number of members not being less than five or more than thirty as the prescribed authority may, having regard to the number of voters in hill areas and other areas and in accordance with such rules as may be made in this behalf by the State Government, determine:

Section 12(ii) of The West Bengal Panchayat Elections Act, 2003 reads as follows:-

"12 (ii) in the case of other areas, one member for every nine hundred voters and one additional member for every fraction thereof."

Rule 22(1)(a), Rule 22(1)(b) and Rule 22(1)(c) of The West Bengal Panchayat Elections Rules, 2006 provide as follows:-

"Delimitation of constituencies and reservation of seats.

22(1) Subject to any general or special direction issued by the Commission in this behalf, the prescribed authority, by an order, shall,-

(a) divide, in recognisable units like paras, localities, neighbour-hoods, bustees or colonies, the area of a Gram into constituencies, each with contiguous area, on the basis of the number of members determined under section 12,

(b) assign consecutive serial number to all such constituencies of a Gram following the sequence of the numbers assigned to the Legislative Assembly polling stations comprising such constituencies,

(c) allocate to each constituency such number of seats, not exceeding two, as may conform to the number determined under section 12;"

31. The work of delimitation of seats in the Domohana Gram Panchayat was done on the basis of the order of the West Bengal State Election Commission dated July 25, 2022. Determination of the number of members to be elected to Domohana Gram Panchayat was made. The formula laid down in Section 12(ii) of the Elections Act was followed. The calculation of one member for every 900 voters and one additional member for every fraction thereof, was done. Such calculation was subject to the provisions of Section 4(2) of the Panchayat Act i.e. the number of members/seats for a gram panchayat should not be less than five or more than 30. In Domohana Gram Panchayat under 32-Karandighi Assembly Constituency, there were 37 polling stations i.e., 67 to 103. There were 34627 voters as on the qualifying date, i.e., January 1, 2022. The number of members (seat) to be elected from Domohana Gram Panchayat were $34627/900 = 38.47$ i.e. 39. The said number of members/seats had to be reduced to 30 from 39 and assigned to 37 polling stations under 32 Karandighi as per the provisions of Section 4(2) of the Panchayat Act read with Section 12(ii) of the Elections Act and Rules 22(1)(a) and 22(1)(b) of the Election Rules. Seats under Domohana Gram Panchayat were to be fixed at 30 and distributed amongst 37 Assembly polling stations. For such allocation of seats, mergers of some of the polling stations were inevitable. The mergers were effected by clubbing together those polling stations which were contiguous or by clubbing those polling booths which were situated within the same premises. Not only geographical proximity of the voters, but also contiguity of the area and convenience of the voters, were taken care of. Magnavita 94 and 95 had been clubbed together in order to create Domohana-XXII Gram Panchayat. Domohana-I, Domohana-III, Domohana-VI, Domohana-X, Domohana-XVI and Domohana-XX were similar constituencies created by clubbing two polling stations on the same parameters as Domohana-

XXII. The number of voters ranged from 1496 to 1584 in those constituencies. It is not a fact that only Domohona XXII had been singled out by merging 94 and 95 Magnavita. Similar exercise was undertaken in respect of other polling stations as well.

32. The chart hereinbelow depicts the mergers:-

Sl No

Assembly No./Assembly Polling Station

No.

Polling Station wise electors as on 1.1.2022

Polling Station Name

Name & No. of GP Constituency

Constituency wise Elector

Allocation of seats

1

32/67

776

Bhulki FP

School (Room No-1)

Domohana/I

1520

Domohana/1-2

32/68

744

Bhulki FP

School (Room No-2)

2

21/69

1329

Bhulki FP S (Room No-3)

Domohana/II

1329

Domohana/II-2

3

32/70

837

Bhulki Madhyapra FPS (Room
No.-1)

Domohana/III

1509

Domohana/III-3

32/71

672

Bhulki Madhyapra FPS (Room
No.-2)

4

32/72

623

Satveti FPS (Room No.-1)

Domohana/IV

623

Domohana/IV-4

5

32/73

943

Satveti FPS
(Room No.-2)

Domohana/V

943

Domohana/V-5

6

32/74

763

Haldibari MSK (Room No.1)

Domohana/VI

1529

Domohana/VI-6

32/75

766

Haldibari MSK

(Room No.2)

7

32/76

1125

Jogiar SSK

Domohana/VII

1125

Domohana/VII-7

8

32/77

1448

Chengatuli Gopalapur F.P.

School

Domohana/VIII

1448

Domohana/VII-8

9

32/78

1239

Gopalapur Madhyamik Siksha Kendra

Domohana/IX

1239

Domohana/IX-9

10

32/79

753

Uttar Kochra FP School

(Room No.-1)

Domohana/X

1496

Domohana/X-10

32/80

743

Uttar Kochra

FP School (Room No.-2)

11

32/81

824

Kochra FP School

Domohana/XI

824

Domohana/XI-11

12

32/82

784

Padhya Kochra

SSK

Domohana/XII

748

Domohana/XII-12

13

32/83

1259

Madargachi

High School

Domohana/XIII

1259

Domohana/XIII-13

14

32/84

1462

Paschim Chownagra

PFS

Domohana/XIV

1462

Domohana/XIV-14

15

32/85

1417

Chownagra FP School

Domohana/XV

1417

Domohana/XV-15

16

32/86

789

Bikour FPS

(Room No-1)

Domohana/XVI

789

Domohana/XVI-16

17

32/87

822

Bikour FPS (Room No-2)

Domohana/XVII

1530

Domohana/XVII-17

32/88

708

Bikour FPS (Room No-3)

18

32/89

833

Dangi FPS

(Room No-1)

Domohana/XVIII

833

Domohana/XVIII-18

19

32/90

741

Dangi FPS

(Room No-2)

Domohana/XIX

741

Domohana/XIX-19

20

32/91

859

Monipara- Kachna FP School (Room

No-1)

Domohana/XX

1533

Domohana/XX-20

32/92

674

Monipara- Kachna FP School (Room
No-2)

21

32/93

1068

Telengadangi

FP School

Domohana/XXI

1068

Domohana/XXI-21

22

32/94

816

Magnavit FPS (Room No.1)

Domohana/XXII

1584

Domohana/XXII-22

32/95

768

Magnavit FPS (Room No.2)

23

32/96

1448

Purba Fatepur SSK

Domohana/XXIII

1448

Domohana/XXIII-23

24

32/97

866

Fatepur-

Singardaha FP School

Domohana/XXIV

866

Domohana/XXIV-24

25

32/98

775

Singardaha

SSK

Domohana/XXV

775

Domohana/XXV-25

26

32/99

1167

Kantirpa N.K. Senior

Madrasha

Domohana/XXVI

1167

Domohana/XXVI-26

27

32/100

634

Piazgaon FPS

Domohana/XXVII

634

Domohana/XXVII-27

28

32/101

862

Barhansh Sarkarpara Health Sub-
Centre

Domohana/XXVII

I

862

Domohana/XXVIII-

28

29

32/102

1418

Barhansh FP

School

Domohana/XXIX

1418

Domohana/XXIX-29

30

32/103

908

Chandragaon FPS

Domohana/XXX

908

Domohana/XXX-30

TOTAL

34627

33. It is the specific contention of the respondents that some polling stations which had less voters were not merged due to their geographical location and/or lack of contiguity with any area, 'basti' or 'para'.

34. Thus, the Court does not find any arbitrariness or illegality in the method by which the prescribed authority has discharged his duty under the provisions of Section 12(ii) of the Elections Act read with Rules 22(1)(a), 22(1)(b) and 22(1)(c) of the Election Rules, 2006. The Court also finds that Section 12(ii) is an enabling provision which carves out a formula to be followed by the authorities to arrive at the number of members per gram panchayat. When such formula was applied to determine the number of members for Domohana Gram Panchayat, the number arrived at was beyond the maximum limit of 30 i.e. $38.47 = 39$. In order to bring down 39 members to 30 as per Section 4(2) of the Panchayat Act and to distribute 30 seats/members amongst 37 polling stations of the Assembly Constituency namely 32 Karandighi in terms of Rule 22(1)(b) of the Elections Rules 2006, merger of the polling stations on the basis of geographical proximity, contiguity and location of the polling booths, was neither arbitrary nor contrary to law. The writ court should be slow to interfere in this case, especially when the legislature had carved out a separate mechanism for determination of all disputes relating to the election process, that is, by filing an election petition. Moreover such issues are also within the domain of the West Bengal State Election Commission.

35. The third last proviso to Section 4(2) of the Panchayat Act states that the State Election Commission may at any time for reasons to be recorded in writing direct the prescribed authority to make fresh determination of the number of members of a gram panchayat or fresh reservation on rotation, of the number of seats in such gram panchayat. The third last proviso to Section 4(2) of the Panchayat Act reads as follows:-

"Provided also that the State Election Commissioner may, at any time, for reasons to be recorded in writing, by order, direct the prescribed authority to make fresh determination of the number of members of a Gram Panchayat or fresh reservation on rotation of the number of seats of such Gram Panchayat and, on such order being issued by the State Election Commissioner, the determination of the number of members or the number of seats to be reserved or the sequence of rotation of reservation of seats or any combination of them as may be specified in such order shall not be varied for the next two successive general elections"

36. In the decision of State of Goa (supra), the Hon'ble Apex Court recognized the power of the State Election Commission. The relevant portion is quoted

below:-

"68.4. Under Article 243-ZA(1), the SEC is in overall charge of the superintendence, direction and control of the preparation of electoral rolls, and the conduct of all municipal elections. If there is a constitutional or statutory infraction by any authority including the State Government either before or during the election process, the SEC by virtue of its power under Article 243-ZA(1) can set right such infraction. For this purpose, it can direct the State Government or other authority to follow the Constitution or legislative enactment or direct such authority to correct an order which infracts the constitutional or statutory mandate. For this purpose, it can also approach a writ court to issue necessary directions in this behalf. It is entirely up to the SEC to set the election process in motion or, in cases where a constitutional or statutory provision is not followed or infringed, to postpone the election process until such illegal action is remedied. This the SEC will do taking into account the constitutional mandate of holding elections before the term of a municipality or Municipal Council is over. In extraordinary cases, the SEC may conduct elections after such term is over, only for good reason.

.....

.....

68.10. The result of this position is that it is the duty of the SEC to countermand illegal orders made by any authority including the State Government which delimit constituencies or allot seats to such constituencies, as is provided in Proposition 68.4 above. This may be done by the SEC either before or during the electoral process, bearing in mind its constitutional duty as delineated in the said proposition."

37. The writ petitioners had failed to avail of the statutory opportunity of approaching the State Election Commission with their grievance of unequal representation and alleged violation of the mandate of proportional distribution of seats amongst the constituencies within Domohana Gram Panchayat. With regard to the argument that the only way out in this case would be to bifurcate Domohana Gram Panchayat by creating two separate gram panchayats, instead of merging the polling stations to form single constituencies, this Court is of the view that the decision to create a gram under Section 3(3)(c) of the Panchayat Act, 1973 is a policy decision of the state. It does not appear that either the petitioners or any other aggrieved voter for that matter, had ever approached the state government with such prayer. At this stage, when the final notification in Form A1 has been published and election is imminent, an exercise to divide the gram, cannot be undertaken. As per the Constitution, a village would mean a village specified by the Governor by public notification, to be a village for the purpose of Part-IX and also includes a group of villages so specified. The action of creation of a gram (village) would involve thorough enquiry and a decision. The process of bifurcation required a public notification in the name of the

Governor in the official gazette. At this stage, when the delimitation of seats had been finally published, the prayer of the petitioner in WPA 2047 of 2023 for a mandamus upon the state respondents to bifurcate Domohana Gram Panchayat and create two separate 'grams', cannot be permitted. Apart from the said petitioner, no one has raised such question. None approached the state authorities with such prayer, at any stage. The villagers could have approached the state authority in accordance with law and demonstrated the reasons as to why bifurcation of the gram would be necessary to maintain the ratio between the population of the constituency to the number of seats allotted.

38. Section 3(3) of Panchayat Act is quoted below:-

"(3) The State Government may, after making such enquiry as it may think fit and after consulting the views of the Gram Panchayat or Panchayats concerned, by notification—

- (a) exclude from any Gram any area comprised therein; or
- (b) include in any Gram any area contiguous to such Gram or separated by an area to which this Act does not extend or in which the remaining sections of this Act referred to in sub-section (3) of section 1 have not come into force; or
- (c) divide the area of a Gram so as to constitute two or more Grams', or
- (d) unite the area of two or more Grams so as to constitute a single Gram."

Such exercise of dividing the area of a gram is a long drawn process. Such decision has to be taken by the state upon making an enquiry and after consulting the views of the gram panchayat or the panchayat concerned. If two or more grams are created, by dividing one 'gram', notifications with the names and local limits of the grams are to be published.

39. On the basis of such belated claim and omnibus allegations, no order can be passed. The prescribed authority has demonstrated the basis and the the reason behind the delimitation of Domohana Gram Panchayat and creation of Domohana-XXII. The Constitution mandates that the ratio of population versus the seat should be maintained 'as far as practicable'. The Elections Act and the Election Rules read with the Panchayat Act provides the method of creation of seats, delimitation of constituencies and allocation of seats. The District Panchayat Election Officer was bound to conform to all the statutory provisions and create constituencies by merging some polling stations. Domohona-XXII is not the only constituency so merged. Thus, on the plea of one or two individuals, such elaborate exercise cannot be set aside. The apprehension that a single member would not be able to serve such a large constituency, is neither based on past experience nor are there sufficient pleadings to that effect. The apprehension is not well founded.

40. In the matter of N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and Ors., reported in AIR 1952 SC 64, the Hon'ble Apex Court held

as follows:-

“(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the ‘election’; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the ‘election’ and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.”

41. In the matter of Manda Jaganath vs. K.S. Rathnam reported in (2004) 7 SCC 492 the Hon’ble Apex Court held as follows:-

“19. In Election Commission of India v. Shivaji [(1988) 1 SCC 277] this Court while considering a challenge to the election notification which included certain Zila Parishads within a notified constituency, held following the judgment in Ponnuswami [AIR 1952 SC 64] that even if there was any ground relating to the non-compliance with the provisions of the Act and the Constitution on which the validity of any election process could be questioned, the person interested in questioning the election has to wait till the election is over and institute a petition in accordance with Section 81 of the Act calling in question the election of the successful candidate.”

42. The facts in the decision of Dravida (Supra), are distinguishable. In that case, nine districts in the State Tamil Nadu had been increased, but the delimitation commission sent its final recommendation to the state government on August 31, 2018 on the basis of the 2011 census, without undertaking the delimitation exercise for constitution of local bodies at all levels, after the additional nine districts had been created. The Apex Court allowed the election in respect of 31 districts but restrained the respondents therein, from holding the elections in respect of the nine newly created districts. A further direction was given to delimit the nine districts and thereafter hold the panchayat elections in respect of those districts. Such is not the case here.

43. The decision of Kamalakar Bapurao Kulkarni (supra) is not factually applicable. Wards were created by bringing in muslim voters from Chaval Galli in an unnatural manner, by pushing the boundaries of the ward into private properties both in the direction of Chaval Galli and also to the East. In this case, such allegations have not been made.

44. The instant writ petition is silent as to how the impugned delimitation had either given political mileage to the ruling party or was intended to deprive the voters of 94 and 95 Magnavita. In any event, at this belated stage, prayers in the writ petitions cannot be entertained.

45. The District Panchayat Election Officer, as the prescribed authority, is bound by the Act and Rules. The said authority cannot take any independent decision with regard to bifurcation of the gram, thereby leading to creation of two separate grams and two gram panchayats.

46. The voters were always at liberty to approach the state government at the appropriate stage, but such opportunity was never availed of. No one approached the State Election Commission, either. The process of delimitation started on and from July 2022 and the Court does not find any reason to exercise the power of judicial review at this stage. The other remedies under the relevant statute, are always available in accordance with law.

47. The writ petitions are dismissed.

48. Parties are directed to act on the server copy of this judgment.