

(2014) 11 MP CK 0134
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6537/2014

Ashish Singh Bhadoriya

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Constitution of India, 1950 — Article 243ZG

Madhya Pradesh Municipalities Act, 1961 — Section 29, 5A

Citation : (2015) 1 MPLJ 222

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Pawan Dwivedi, Advocate for the Appellant; M.P.S. Raghuvanshi, Addl. Advocate General, Advocate for the Respondent

Judgement

Sujoy Paul, J.—?Law has reached its finest moment when it has freed man from the unlimited discretion?. Since the Legislature has enacted the Madhya Pradesh Municipalities Act, 1961 (hereinafter called as the "Act") and Madhya Pradesh Municipalities (Extent of Wards) Rules, 1994 (hereinafter called as the ?Rules?), petitioner, a citizen of Vidisha thought that said finest moment has reached and authorities are now bound to act in consonance and within the frame work of these provisions. The petitioner is aggrieved by notification dated 19.9.2014 (Annexure P/1) and prayed that it be set aside. A mandamus is prayed for to direct the respondents to undertake the exercise of determination of extent of wards afresh in accordance with the said rules. Lastly, it is prayed that the respondents be directed to follow the procedure as prescribed in Section 5-A of the Act.

2. The relief prayed for shows that grievance of the petitioner is of two fold. Firstly, it is contended that the notification dated 19.9.2014 is not in consonance with section 29 of the Act and rules 3,6,7 and 8 of the Rules. Relief 7(iii) is prayed for by contending that as per Section 5-A of the Act, the ultimate decision is to be taken by the Governor whereas in the present case it is taken by the

Collector.

3. Shri Pawan Dwivedi submits that determination of number and extent of wards needs to be done as per section 29 of the Act. Rules 3 to 8 prescribe methodology for the purpose of determination of number and extent of wards. It is submitted that the procedure prescribed in the said rules is not followed. No notice regarding the proposal if prepared under rule 6 is published by the Deputy Collector in the local newspaper in the prescribed form. Notices were not pasted in notice board of the office of Collector, office of Municipality and on other conspicuous places in the ward for the information in general public. No objections were invited and therefore, general public was deprived from their right of preferring objection.

4. In support of relief 7 (iii) reliance is placed on a Division Bench judgment passed in WP No. 12777/2014 (Abhinesh Mahore vs. State of MP) and the order passed in RP No. 667/2014 (between the same parties).

5. Per Contra, Shri MPS Raghuvanshi, learned Additional Advocate General submits that under section 5-A initial notification was issued on 4.6.2014, published in M.P. Gazette on 20.6.2014. Thereafter, second notification was issued on 21.8.2014, Annexure A/3. The petitioner has not challenged these notifications and, therefore, relief 7(iii) is not tenable. So far validity of notification, Annexure P-1, is concerned, Shri Raghuvanshi relied on the notification dated 30.8.2014 published in M.P.Gazette on 5.9.2014. He submits that by this notification the objections were invited. Thereafter, subsequent notification dated 10.9.2014 is passed, whereby the Collector has determined the extent of wards in Municipal Council, Vidisha. He submits that this writ petition is not maintainable in view of specific bar in Article 243ZG of the Constitution of India. He relied on Anugrah Narain Singh and Another Vs. State of U.P. and Others, . He submits that if this petition is finally heard with regard to validity of impugned notification, Annexure P-1, he has no objection. However, he submits that if this Court intends to entertain this petition with regard to other notifications issued under Section 5-A, he be given liberty to file a detailed reply and submit the relevant record.

6. I have heard learned counsel for the parties and perused the record.

7. In view of aforesaid stand of Government, I deem it proper to first deal with the aspect whether relief 7(iii) can be entertained.

8. It is seen that in Abhinesh Mahore (supra) the petitioners therein challenged both the notifications. Since notifications were called in question, the court examined the decision making process. Indore Bench of this Court on 11.11.2014 passed a detailed judgment in WP No. 3538/2014 (Anil Trivedi vs. State of MP). In this case also, the relevant notification dated 17.2.2012 was called in question. In the opinion of this Court, in absence of challenging the notifications passed under section 5-A of the Act (20.6.2014 and 21.8.2014, Annexures A/1 and A/3, respectively), it will not be proper to entertain the

petition. Unless the validity of said notifications is challenged, this court is not obliged to examine the decision making process related to issuance of the said notifications. Resultantly, I am of the opinion that relief 7(iii) cannot be granted in absence of challenging the said notifications. The said relief is declined. However, in the interest of justice, liberty is reserved to the petitioner to file appropriate proceedings to challenge the said notifications.

9. So far the objection of maintainability of petition on the pretext of bar under Article 243ZG is concerned, suffice it to say that said objection is without any basis in view of the law laid down by Apex Court in *State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.*, . The Apex Court opined that so long as the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot not interfere with the same. In *Anugrah Narain Singh (supra)* the Apex Court considered this judgment and opined that ?it was also held by the court that any challenge to the validity of the delimitation of the constituencies or allotment of seats to such constituencies and the election to any Panchayat should not be entertained by court except on the ground that before delimitation, no objection was invited and no hearing was given (para 30).

(Emphasis is mine).

10. In this view of the matter, since petitioner has challenged the validity of impugned notification on the ground that no objection was invited and no hearing was given, this petition is very much entertainable. It is also noteworthy that admittedly for Vidisha municipality, elections have not been declared so far.

11. In view of aforesaid, the only point needs to be decided is whether the notification dated 19.9.2014 is in accordance with law ?

12. Rule 6 of the Rules prescribes the methodology for preparation of proposal to determine the extent of wards. Rule 7 provides the method and manner in which preliminary publication of determination of the extent of wards is to be made. A plain reading of this provision shows that a notice regarding proposal as prepared under rule 6 needs to be published by Deputy Collector in the local newspaper in the form prescribed under the rules. Copies of such notices are required to be pasted in the notice board of the office of Collector, Municipality and in conspicuous places in the ward for information to general public. I find substantial force in the argument of Shri Pawan Dwivedi that this exercise has not been undertaken. Shri Raghuvanshi is unable to show that requirement of rules 6 to 8 is fulfilled. Since no notice was published in consonance with rule 7, the public had no occasion to submit their objections. The Collector without inviting objections passed the final notification. It is apposite to quote the relevant portion from the initial notification dated 30.8.2014 and subsequent notification dated 10.9.2014. It reads as under :-

If aforesaid is read in juxtaposition, it will be clear that no opportunity of any nature was given by the Collector to the Public. In the first notification itself he

determined the extent of wards. The language of both the notifications is same. Therefore, it is clear that he acted contrary to the mandate of the rules. A Five Judges Bench of Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, opined that the authority has to act in accordance with and within the limits of the legislation, its order can be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation. In the present case, the authority has clearly acted contrary to the requirement of the rule and, therefore, interference is warranted. Apart from this, this is settled in law that if a statute prescribes to do a thing in a particular manner, it has to be done in the same manner or not at all. (See, *Sri Baru Ram Vs. Prasanni and Others*, and *Satyanjay Tripathi and Another Vs. Banarsi Devi*, . For not following the statutory procedure, interference is inevitable.

13. In the result, the notification, Annexure P-1 dated 19.9.2014 is set aside. The respondents are directed to undertake the exercise of determination of extent of wards afresh in accordance with Rules of 1994.

14. Petition is allowed.