
(2019) 10 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 3331, 3334, 3341, 3619, 3382 Of 2019, CM No. 6963, 6986, 7007, 7038, 7502, 7076 Of 2019

Dheeraj Kumar And Another

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 05-10-2019

Acts Referred:

Jammu And Kashmir Panchayati Raj Act, 1989 — Section 2(p), 2(0), 4, 17, 27, 27(3), 27(3)(2)(1), 27(3)(2), 28, 36, 36D2(cc), 41, 80
Code Of Civil Procedure, 1908 — Section 89(2)(c), 89(2)(d)
Jammu And Kashmir Panchayati Raj Rules, 1996 — Rule 102, 201
Constitution Of India, 1950 — Article 14, 152, 243, 243A, 243B, 243C, 243C(2), 243C(3), 243C(5), 243(c)(5)(b), 243D, 243D(1), 243D(2), 243D(4), 243E, 243F, 243G, 243H, 243I, 243J, 243K, 243L, 243M, 243N, 243O, 308, 363, 370, 370(1), 370(3)

Citation : (2019) 10 J&K CK 0007

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : Seema Shekher, Ashish Sharma

Final Decision : Dismissed

Judgement

Dhiraj Singh Thakur, J

1. Since in all the petitions, the issues are almost similar, therefore, they are clubbed together. I propose to deal with all the petitions by way of a common judgment.

2. In all these petitions, the petitioners question the process of reservation of Block Development Council Constituencies in various districts in the Jammu Division.

3. A mandamus is also sought declaring the proviso (1) and proviso (2) to sub-section 3 of Section 27 of the Jammu & Kashmir Panchayati Raj Act, 1989 (hereinafter referred to as "the Act") as ultravires the Constitution of India and

provisions of the Act.

The legality of the powers vested in the Director Rural Development have also been questioned. Besides this, among others challenge is thrown to the vires of Schedule X of the Rules of 1996 framed under the Panchayati Raj Act of 1989.

Constitutional Provisions

4. Article 243A to 243O were inserted in part IX of the Constitution of India pertaining to "the Panchayats" by way of 73rd Amendment Act, 1992 with effect from 01.06.1993. While Article 243 pertains to the definitions, 243B envisages constitution of Panchayats in every State at the village, intermediate and district levels in accordance with the provisions of Part IX.

5. Article 243C envisage that the Legislature of the State may, by law, make provisions with respect to the composition of the Panchayats, provide that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

Article 243C(2) envisages that all the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. Article 243C(3) also envisages that the Legislature of a State may, by law, provide for representation of the Chairpersons of the Panchayat at the intermediate level in the Panchayats at the district level.

6. Article 243C(5) envisages that the Chairperson of a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by, law provide and a Panchayat at the intermediate level or district level, to be elected by, and from amongst, the elected members thereof.

7. Article 243D(1) pertains to reservation of seats in favour of the Scheduled Castes and Scheduled Tribes in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. Article 243D(2) further envisages not less than one-third of the total number of seats reserved under clause 243D(1) shall be reserved for women belonging to the Scheduled Castes or Scheduled Tribes, as the case may be.

8. Article 243D(4) envisages that the offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide and further that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion of the total number of such offices in the Panchayats at each level as the population

of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State.

It provides that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women and further that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

Jammu & Kashmir Panchayati Raj Act, 1989

9. In line with the Constitutional Mandate, in the State of Jammu & Kashmir, was enacted and enforced the Jammu & Kashmir Panchayati Raj Act, 1989. Section 2(p) defines "Prescribed Authority" to mean an authority as may be appointed by the Government by notification, for all or any of the provisions of this Act. While Section 4 falling under Chapter II deals with establishment and constitution of Halqa Panchayats. Chapter VI pertains to Block Development Council. According to Section 27 falling under Chapter VI of the Act, the Block Development Council is to consist of a Chairperson and all Sarpanches of Halqa Panchayats falling within the Block.

10. The proviso to Section 27 envisages that the offices of Chairpersons of Block Development Council shall be reserved for Scheduled Castes and Scheduled Tribes in every district and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of offices of Chairpersons to be filled by direct election in that district as the population of Scheduled Castes in that district or of the Scheduled Tribes in that district, bears to the total population in that district and such offices may be allotted by rotation to different Block Development Council Constituencies in a district in such manner and by such authority as may be prescribed.

In line with the constitutional mandate, as discussed in the preceding paragraphs not less than one-third of the total number of offices of Chairpersons reserved under the above proviso shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

11. Since Sections 27, 28 & 41 of the Act have been the subject matter of debate in these petitions, it would be appropriate to reproduce the same for facility of reference:-

"Section 27:-

Constitution of Block Development Council

(1) For every Block in the State, Government shall, by notification, constitute a Block Development Council bearing the name of the Block.

(2) Every Block Development Council shall be a body corporate, having perpetual succession and a common seal and shall, by its corporate name, sue and be sued, subject to such conditions or restrictions as the Government may prescribe.

(3) The Block Development Council shall consist of:-

(i) a Chairperson:

(ii) all Sarpanches of Halqa Panchayats falling within the Block;

(iii) Omitted.

"Provided that the offices of Chairpersons of Block Development Councils shall be reserved for-

(a) The Scheduled Castes and

(b) The Scheduled Tribes,

in every district and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of offices of Chairpersons to be filled by direct election in that district as the population of scheduled castes in that district, or of the scheduled tribes in that district, bears to the total population in that district and such offices may be allotted by rotation to different Block Development Council Constituencies in a district in such manner and by such authority as may be prescribed.

Provided further that-

(a) not less than one-third of the total number of offices of Chairpersons reserved under the above proviso shall be reserved for women belonging to the scheduled casts or, as the case may be, the scheduled tribes; and

(b) not less than one-third of the total number of offices of Chairpersons to be filled by direct election in the district shall be reserved for women (including the number of offices of Chairpersons of Block Development Councils reserved for women belonging to scheduled castes or scheduled tribes) and such offices may be allotted by rotation to different constituencies in a district by such authority and in such manner as may be prescribed"

Section 28:-

Chairman, Vice-Chairman and Secretary.-

(1) Every Block Development shall have a Chairperson who shall be a Sarpanch or Panch in any Halqa Panchayat of that Block and shall be elected in accordance with the provisions contained in section 41; Provided that on election of a Sarpanch or a Panch as the chairperson of Block Development Council, he shall, after having been so elected, vacate his office as Panch or Sarpanch as the case may be.

Section 41:-

Election of the chairperson of Block Development Council

The Chairperson of Block Development Council shall be elected by the electoral

college comprising Panches and Sarpanches of Halqa Panchayats falling within the Block. The election shall be held in such manner as may be prescribed."

The Jammu & Kashmir Panchayati Raj Rules, 1996

12. The Jammu & Kashmir Panchayati Raj Rules, 1996 (hereinafter referred to as "the Rules") were framed in terms of Section 80 of the Act of the Jammu & Kashmir Panchayat Raj Act, 1989. Chapter 7 of the Rules pertains to constitution of Block Development Council for which as per Rule 102, the Chief Electoral officer has been envisaged as the election authority for elections of Chairperson of the Block Development Council. However, Rule 102 was amended vide SRO 521 dated 02.09.2019 which inter alia provided that the Government shall by notification determine constituencies for each Block Development Council bearing the name of the Block and comprising of all Halqa Panchayats of that Block.

Governmental Action

13. The Government issued order No. 222 RD & PR of 2014 dated 23.07.2014, whereby 177 New Community Development Blocks (CD Blocks) were created at the district level. Subsequently, the Government issued SRO 406-A dated 13.10.2014, which determined the composition of the newly created blocks giving details of Panchayat Halqas, which would constitute the newly created Blocks.

14. The Director General, Rural Development, Jammu issued notice No. 01 of 2019 dated 11.07.2019 inviting objections to the draft proposal for reservation of Block Development Council Constituencies in every block of Jammu Division from the general public. Subsequently, Notice No. 2 of 2019 dated 31.07.2019 and thereafter notice No. 3 of 2019 dated 10.08.2019 and notice No. 4 of 2019 dated 27.08.2019 were issued, calling for objections to the draft proposal for reservation of Block Development Council Constituencies. Notification No. 5 of 2019 dated 04.09.2019 was issued by the prescribed authority, i.e., the Director General, Rural Development, Jammu, whereby the said authority notified the final reservation for Block Development Council Constituencies for Scheduled Castes and Scheduled Tribes and women in every district of Jammu Division.

Methodology for Reservation for SC & ST and Women

15. While the respondents appeared to have provided for reservations to the offices of the Chairpersons of Block Development Council for SC and ST on the basis of the ratio of their population to the total population of the district, a roster system was adopted for providing one-third reservation for women, according to which every 1st, 4th, 7th, 10th, 13th ... office of the Chairperson of a Block in a district arranged alphabetically was to be reserved for women on rotational basis.

16. In line of the aforementioned facts, individual grievances of the petitioner be noticed.

WP(C) No. 3341/2019

(Dhiraj Kumar & anr. Vs State of J&K and others)

17. The petitioners are the Sarpanches for Panchayat Halqa Dhangri and Panchyat Halqa Seri. Both falling in Block Dhangri of district Rajouri. According to notification No. 5 of 2019 dated 04.09.2019, district Rajouri has as many as 19 Blocks, which are as under;-

Final Block-wise reservation of SC/ST & Women in respect of District Rajouri

Sr. No

Name of District

Name of Block

Reservation SC/ST/ Women

6

Rajouri

1

Budhal (New)

Women

2

Budhal (Old)

ST

3

Darhal

Open

4

Dhangri

Women

5

Doongi

ST

6

Kalakote

ST

7

Khawas

ST Women

8

Lamberi

Open

9

Manjakote

Open

10

Moughla

Women

11

Nowshera

SC

12

Panjgrian

ST

13

Plangarh

Women

14

Qila Darhal

ST

15

Rajouri

ST

16

Seri

Women

17

Siot

Open

18

Sunderbani

Open

19

Thannamandi

Open

18. Block Dhangri has been reserved for women since it fell at Sr. No. 4 as per the roster system.

With a view to avoid Dhangri figuring at Sr. No. 4 being reserved for women candidates, the petitioners advanced a two-fold argument. Firstly, it was urged that Block Budhal (New) has wrongly been named as Block Budhal (New) and should have infact continued to be named as Raj Nagar and secondly it was urged that Dhangri was wrongly spelt and ought to have been spelt as Dangri, which was otherwise the spelling, which was contained in the Government Order No. 222 RD & PR of 2014, whereby 177 new Community Development Blocks were created.

19. With regard to the Block Budhal (New), it is stated that with the creation of 177 new Community Development Blocks vide order No. 222 RD & PR of 2014 of which Budhal was one such Block, the said Block was always named as Raj Nagar and Panchayat-wise reservation of Panch/Sarpanch Constituencies for SC & ST were prescribed on that basis. Reliance in this regard was placed upon order No. 14 DRD of 2018 dated 11.01.2018 as also the press note issued for Panchayat Elections in Jammu & Kashmir dated 23.10.2018.

20. It was stated that elections were conducted for the post of Panches and Sarpanches, considering Raj Nagar as a different Block in district Rajouri. A certificate of election issued by the Returning Officer, Panchayat Halqa Samot is relied upon to show that one Abdul Gafoor was elected as Sarpanch from Block Raj Nagar. Similarly, one Mohd. Iqbal is shown to have been elected as Sarpanch from Block Raj Nagar along with others from various constituencies in the said Block. Not only this, it was urged that funds were released by the Government of Jammu & Kashmir vide order dated 27.08.2015 treating Raj Nagar as a separate Block. It was thus urged that it was palpably erroneous to name Raj Nagar Block as Budhal (New) when the entire process for electing Panches and Sarpanches had been completed in the year 2018, treating Raj Nagar as a separate Block.

In case the petitioners were to succeed on this ground, then the effect would be

that Budhal (Old) would figure at Sr. No. 1 of the notification No. 5 of 2019 and, therefore, as a necessary consequence Dhangri would fall at Sr. No. 3 and would, therefore, be an unreserved Block.

21. This argument, however, cannot succeed considering the objections filed by the official respondents. It is stated that the Government Order No. 222 RD & PR of 2014 had created as many as 07 Blocks in district Rajouri of which Budhal figured at Sr. No. 7. It was further contended that there already existed a Block Budhal in district Rajouri and, therefore, there was an error committed in renaming the newly created Block also as Budhal. As a part of that error, it was urged that for purposes of conduct of elections for the post of Panches and Sarpanches held in the year 2018, the District Panchayat Officer, Rajouri had named the said Block as Raj Nagar, published it in the newspaper on 29.03.2016, however, no objection was received from the public and elections were held on the basis thereof.

22. However, it is stated that in the process of elections of BDCs initiated in the year 2019, objections were received regarding nomenclature of Block Raj Nagar, which were referred to a committee of three members, which submitted its report on 26.08.2019, which report suggested that the Block Budhal (New) and Raj Nagar had been used interchangeably since the time the said Block was created. As per the report of the committee the name Budhal (New) was required to be used for the newly created Block in tune with SRO 406-A of 2014.

23. Having heard learned counsel for the parties on this issue, it can be clearly seen that Government Order No. No. 222 RD & PR of 2014 had never envisaged the creation of Block by the name of Raj Nagar. What was created was Budhal. However, since there already existed a constituency Budhal, therefore, an attempt was made to rectify that error when SRO 406-A of 2014 was issued on 13.10.2014, by virtue of which the composition of the newly created 177 CD Blocks was determined. As per said SRO, the Block was described as Budhal(New) and not Raj Nagar. Notwithstanding the fact that the elections were conducted and certificates issued in favour of the elected Panches and Sarpanches reflecting them to be belonging to Block Raj Nagar, the fact remains that Raj Nagar was never intended to be the name of the newly created Block. Even otherwise, there was no challenge by the petitioners even when they had participated in the election process in the year 2018. In my opinion, the challenge of the petitioners on this ground, therefore, is untenable in law and is, accordingly, rejected.

24. During the course of arguments, Mr. Johal, learned senior counsel urged that one of the newly created Blocks in district Rajouri was to be spelt as Dangri and not as Dhangri. However, it can be seen from SRO 406-A that the said Block has been spelt as "Dhangri" and this was done as far back as in 2014 when the composition of these newly created Blocks was determined. Not only this, even in the process of election conducted in the year 2018 for the office of Panches & Sarpanches, Dhangri has been spelt as Dhangri and not as Dangri. In my

opinion, notification No. 5 of 2019 cannot be quashed in regard to district Rajouri only on the basis of such a challenge. The plea raised is, according, rejected.

25. Another argument which was addressed quite vehemently by Mr. Johal, learned senior counsel was aimed at raising doubts over the very genuineness of SRO 406-A. It was urged that the numbering in the said SRO appeared to have been incorporated by hand, which according to him was unusual. However, even this plea fails in view of the fact that the said SRO has properly been notified and published in the Government Gazette on 13.10.2014.\

26. One of the reliefs claimed in the petition is for issuance of writ of mandamus for declaring proviso (1) and proviso (2) to sub-section 3 of Section 27 of the Jammu & Kashmir Panchayati Raj Act, 1989 to be declared as ultravires the Constitution of India and provisions of the Act. It was urged that there was an inherent contradiction between Section 41 of the Act, which talked about the Panches and Sarpanches of Halqa Panchayats falling within the Block to be the electoral college for electing the Chairperson of the BDC as against the proviso (1) and proviso (2) to sub-section 3 of Section 27, which talked about "filling up the office of the Chairperson by direct election." It was thus urged that the elections cannot be permitted to proceed further till Section 27 was quashed and the provisions brought in tune with Section 41 of the Act.

27. This issue also came up for consideration before a Coordinate Bench of this court in case titled "Hanifa Akhter Vs State and others" bearing WP(C) No. 3421/2019 decided on 26.09.2019. What was stated is reproduced hereunder:-

"12. As far as argument raised regarding the language used in Section 27 of the Act being 'direct election' whereas in terms of Section 41 of the Act, indirect election is provided, the scheme of the Act as is evident from Sections 28 & 41 of the Act clearly provides for indirect election of Block Development Councils. Merely because in Section 27(3) of the Act, the words 'direct election' have been mentioned, the petitioner does not get any advantage therefrom. It may be omission in the aforesaid provision or some error. The principles for interpretation of statutes are well settled. Reference can be made to the judgment of Hon'ble the Supreme Court in *Afcons Infrastructure Limited and another vs Cherian Varkey Construction Company Private Limited and other*, (2010) 8 SCC 24. Relevant paras therefrom are extracted below:

"20. The principles of statutory interpretation are well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the legislature intended or desired. Legislative wisdom cannot be replaced by the Judge's views. As observed by this Court in a somewhat different context:

'6. ... When a procedure is prescribed by the legislature, it is not for the court to

substitute a different one according to its notion of justice. When the legislature has spoken, the judges cannot afford to be wiser.'

21.1. Maxwell on Interpretation of Statutes (12th Edn., p. 228), under the caption 'modification of the language to meet the intention' in the chapter dealing with 'Exceptional Construction' states the position succinctly:

'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's un-skillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.'

This Court in *Tirath Singh v. Bachittar Singh*, AIR 1955 SC 830, approved and adopted the said approach.

21.2. In *Shamrao V. Parulekar v. District Magistrate, Thana*, AIR 1952 SC 324 : 1952 Cri LJ 1503, this Court reiterated the principle from Maxwell: (AIR p. 327, para 12)

'12. ... if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided.'

13. While applying the aforesaid principles in *Afcons Infrastructure Limited and others'* case (supra), Hon'ble the Supreme Court interchanged the words 'judicial settlement' and 'mediation' as contained in Section 89(2)(c) & (d) of the Code of Civil Procedure, 1908, to correct the draftsman's error. Applying the aforesaid principles of interpretation of statutes, in my view, the words 'direct election' used in Section 27(3) of the Act is an error which has to be read in consonance with other provisions of the Act and keeping in view scheme of the Act, namely, Sections 28 & 41 of the Act, which provide for indirect election. Hence, even this argument of learned counsel for the petitioner has no merit."

28. I cannot persuade myself to take a view different from the one taken in the aforementioned judgment and order, considering the clear and unambiguous

mandate of Article 243(C)(5)(b), which envisages that the Chairperson of a Panchayat at the intermediate level or the district level, shall be elected by and from amongst the elected members thereof as also the provisions of Section 27 & 41 of the Act.

29. The ground taken in the petition with regard to the reservation in favour of SCs, STs & women being violative of the mandate of Article 14 of the Constitution was not urged at the time of hearing and, therefore, need not be gone into at all.

Although, a feeble attempt was also made by the learned senior counsel for the petitioners to question the issuance of the impugned notification on the ground of malafides. It was urged that the name of Block Raj Nagar was changed to Budhal (New) only to benefit the brother of private respondent No. 6, who was the Deputy Commissioner, Srinagar. However, in view of what has already been stated in the preceding paragraphs, in my opinion, the action of the official respondents in naming the Block Budhal (New) does not appear to suffer from any malafide action on the part of the respondents, but was necessitated on account of the facts and circumstances of the case.

30. For the reasons mentioned above, this petition is found to be without any merit and is, accordingly, dismissed along with connected civil miscellaneous applications.

WP(C) No. 3331/2019

(Mohd. Farooq Inqlabi & others Vs State of J&K and others)

31. The grievance of the petitioners in the instant petition is almost similar to one in WP(C) No. 3341/2019. The petitioners are all Panches and Sarpanches and challenge the notification No. 05 of 2019 mainly on the ground that infact Raj Nagar should not have been renamed as Budhal(New) and further that Budhal should have continued to remain Budhal instead of naming it Budhal (Old). It was urged that the erstwhile Block which existed before the correction of the Block Budhal(New) was called simply as Budhal and not Budhal (Old) and that in renaming it as Budhal (Old), undue benefit of reservation was sought to be conferred illegally and arbitrarily.

32. The entire issue as regards Budhal (New) and Raj Nagar has already been discussed hereinabove in the petition bearing WP(C) No. 3341/2019, which holds good even for purposes of the present petition and the challenge to that extent is thus rejected. However, the action of the official respondents in naming Budhal as Budhal (Old) also does not appear to be suffering from any illegality, inasmuch as, it had become necessary for naming not only the newly created Budhal as Budhal (New) but even the Budhal as Budhal (Old) with a view to avoid any confusion whatsoever. The allegations of malafides in regard to the renaming of Raj Nagar as Budhal (New) are also found to be without any basis whatsoever.

33. For the reasons mentioned above, and those discussed in the earlier petition, the petition is found to be without any merit and is accordingly, dismissed along with connected civil miscellaneous applications.

WP(C) No. 3334/2019 & 3619/2019

(Fateh Chand Vs State of J&K and others & Dharaminder Singh & others Vs State of J&K and others)

34. In these writ petitions, the petitioners challenge the reservation notification No. 5 of 2019 in regard to district Jammu, which has as many as 20 Blocks, which are as under:-

Final Block-wise reservation of SC/ST & Women in respect of District Jammu

Sr. No.

Name of District

Name of Block

Reservation SC/ST/ Women

2

Jammu

1.

Akhnoor

Women

2.

Arnia

SC

3.

Bhalwal

SC

4.

Bhalwal Brahmana

Women

5.

Bishnah

SC

6.

Chowki Chora

Open

7.

Dansal

Women

8.

Kharah Balli

Open

9.

Khour

Open

10.

Mairan Mandrian

Women

11.

Mandal Phallian

SC

12.

Marh

SC

13.

Mathwar

Women

14.

Miran Sahib

SC

15.

Nagrota

Open

16.

Pargwal

SC Women

17.

R. S. Pura

Open

18.

Samwan

Open

19.

Satwari

ST Women

20.

Suchetgarh

Open

35. Learned counsel for the petitioner in WP(C) No. 3334/2019 urged that the population of Block Bhalwal was reserved by wrongly showing the population of Scheduled Caste as 25146, whereas the actual population was 35412. With regard to the R. S. Pura Block, the SC population was 61013 as against 19547 reflected in the impugned notice.

36. It was urged that with reference to the 2011 census figures obtained by the petitioner through RTI, it is stated that Block Bhalwal had approximately 35412 SC category population as against 25146 reflected by the respondents in their notice No. 2 of 2019. Secondly, it was stated that Block R. C. Pura had SC population of 61013 as against 19547 reflected in the above notice.

37. It was also urged that the respondents had not provided for one-third reservation in the reserved constituencies of SC & ST in terms of Section 27 of the Act. It was urged that out of the 20 Blocks, the share of reservation of SC would come to 07, which is not disputed. However, out of the 07 reserved Blocks, 33 percent had to be reserved further for women, which had not been done in the present case and that only block, namely, Pargwal had been so reserved.

38. Per contra, Mrs. Seema Shekher, learned Sr. AAG submitted that the census figures of 2011 were based upon the population calculated on the revenue village basis as against the population figures of Panchayats, which constituted the Blocks. It was stated that the reason why R. S. Pura Block is shown to have

19547 as Scheduled Caste population was the fact that two Blocks, namely, Suchetgarh & Miran Sahib were created from within the earlier existing R. S. Pura Block. This was done in 2014 vide Government Order No. 222 RD & PR of 2014. It is stated that at that time R. S. Pura had 58 Panchayats and population figures received from the Census Department was village-wise. It was further urged that the petitioner himself had contested the elections for the post of Sarpanch and was elected from Panchayat Halqa Rangpur Sadhrey Block R. S. Pura and that the population figures had remained the same and that the population figures were not expected to change as both the elections were to be conducted on the basis of 2011 census.

39. In my opinion, the argument of the learned counsel for the petitioner respondent-State deserves to be accepted for the simple reason that the census figures for the two elections, which is proposed to be held and the other which was already conducted in the year 2018 remains unchanged, as the base is the year 2011. In any case, the explanation rendered by Mrs. Shekher, learned Sr. AAG that two more Blocks, namely, Suchetgarh and Miran Sahib were created from the existing R. S. Pura Block is justification enough to show the reduced SC population as 19547.

40. However, admittedly, the official respondents were required to give 33 percent reservation to women even in the SC category in terms as per proviso (2) to sub-section 3 of Section 27 of the Act, which has not been done in the present case. It is admitted that out of the 20 Blocks the share of reservation of SC would come to 07 and if 33 percent had to be reserved further for SC women, 02 Blocks ought to have been reserved instead of 01 reserved for SC women, i.e. the Pargwal Block.

41. While it is true that one more Block ought to have been reserved for SC women, yet the petitioner cannot be said to be aggrieved in any manner, inasmuch as, even if one more Block was to be reserved, he would not stand to benefit in any manner. Although, it could have been ideal for the respondents to comply with the mandate of the Act in consonance with the constitutional requirement in its letter and spirit, yet this not being a public interest litigation and the petitioner not being a person aggrieved cannot be permitted to throw a challenge on that ground especially when the election scheduled has already been notified on 29.09.2019, which was published on 13.09.2019. This is in consonance with the ratio of the judgments of the Apex Court in "Shaji K. Joseph Vs V. Vishwanath and others" reported in AIR 2016 SC 1094 to emphasize the point that once the election process starts, it would not be proper for the Courts to interfere with the election process. Paragraph 14 of the said judgment is reproduced as under:-

14. as per the settled law, the High Court should not have interfered with the election after the process of election had commenced. The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with

the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without court's order. Very often, for frivolous reasons candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated."

42. In the aforementioned judgment, reliance is placed upon the case titled "Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. Vs State of Maharashtra" reported in AIR 2001 SC 3982, which holds thus:-

"12..... it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll....."\

43. The grounds of the challenge of the petitioners in WP(C) No. 3619/2019 are almost the same as those raised in WP(C) No. 3334/2019 and have already been dealt with.

44. Mr. Abhinav Sharma, learned counsel for the petitioners in WP(C) No. 3619/2019 stated that the Block Bhalwal was an open Block before issuance of notice impugned No. 2 of 2019 and further that the same had suddenly been declared as reserved in terms of the impugned notice No.5 of 2019. It was reiterated that the SC population of Bhalwal was not 66677 but 51968. This it was stated on the basis of population figures obtained from the National Survey of India. According to Mr. Abhinav Sharma, the SC population for Bhalwal Block was only 16453 and not 25146 and further that the total population was only 51968 and not 66677. It was thus urged that calculating the percentage on the basis of aforementioned figures which would only come to 36.6 percent and thus Bhalwal Block would figure at Sr. No. 12 and not as per the impugned notice. However, the issue of population has already been discussed but rejected in WP(C) No. 3334/2019.

45. For the reasons mentioned above, and those discussed in the earlier petitions, these petitions are found to be without any merit and are accordingly, dismissed along with connected civil miscellaneous applications.

WP(C) No. 3382/2019

(Sushil Kumar Vs State of J&K and others)

46. In WP(C) No. 3382/2019, the petitioner is an elected Sarpanch from Panchayat Ghatti in District Kathua. The petitioner is aggrieved of the notice No. 02 of 2019 dated 31.07.2019 to the extent it pertains to Bani and Lohai-Malhar blocks. Bani Block is alleged to have been stated to be illegally reserved as SC/ST Block and Lohai-Malhar Block was kept open, which is as under:-

Final Block-wise reservation of SC/ST & Women in respect of District Kathua (as

per 2011 census)

Sr. No.

Name of District

Name of Block

Reservation SC/ST/ Women

3

Kathua

1.

Baggan

Women

2.

Bani

ST

3.

Barnoti

Open

4.

Basohli

Women

5.

Bhoond

Open

6.

Billawar

Open

7.

Dhar Mahanpur

Women

8.

Dinga Amb

Open

9.

Duggain

Open

10.

Duggan

ST Women

11.

Hiranagar

Open

12.

Kathua

SC

13.

Keerian Gandyal HQ Lakhanpu

Women

14.

Lohai Malhar

Open

15.

Mahanpur

Open

16.

Mandli

SC Women

17.

Marheen

SC

18.

Nagri

SC

19.

Nagrota Gujroo

Open

47. The petitioner also seeks the issuance of a writ of certiorari for quashing Schedule X of the J&K Panchayati Raj Rules, 1996 to the extent it delegates and confers powers on the Director Rural Development under Section 27 (3) proviso of the Act.

48. It is stated that even when the notice impugned required filing of objections, which were filed by the petitioner, it is alleged that the same have neither been considered nor any decision communicated to the petitioners regarding the same.

49. It is stated that the Director Rural Development had issued Notification No. 05 of 2019 dated 04.09.2019, by virtue of which, the earlier proposed reservation for SC/ST and Women, in toto, has been finalized without any change.

50. It is stated that the District Kathua has been divided into 19 blocks. Based upon the interpretation of Section 27 of the Panchayati Raj Act, the respondent No. 4, i.e., Director Rural Development has calculated number of blocks, which were required to be reserved for SC and ST and for women candidates.

51. It is also stated that the petitioner does not dispute the extent of reservation and the number of blocks that were required to be reserved for SC/ST and women, what is challenged is the methodology adopted for identifying those blocks, which were required to be reserved.

52. It is further stated that the method of reserving Blocks as per roster points was not supported by any rule. It was stated that for purposes of identifying, as to which block had to be reserved, the government had first to frame rules in terms of Sections 2(0) and Section 80 of the Act.

53. Reliance is also placed upon proviso 1 to Sub-Clause 3 of Section 27 of the Act. It is stated that while the Director Rural Development may be the prescribed authority, no rules have been framed, which could guide the Director Rural Development to adopt a policy, which has been prescribed for purposes of reserving the blocks for purposes of giving effect to the reservation, envisaged under Sections 27 and 80 of the Act.

54. A lot of emphasis has been laid on the phrase "such manner and by such authority, as may be prescribed" to highlight the point that neither has the manner been prescribed nor the authority identified.

55. With a view to challenge the manner, in which the respondent No. 4 had proceeded to reserve the blocks, it was stated that the same could not be done without first determining the constituencies of each block in terms of SRO 521 dated 02.09.2019, by virtue of which, an amendment was incorporated to Rule

102 of the Rules under the Act. Emphasis was led on the following rule, as amended by the aforementioned SRO.

"(3) (i) The entire Block shall be the constituency for election of Chairman of Block Development Council of such Block.

(ii) For every block, Government shall, by notification, determine constituency for each Block Development Council bearing the name of the Block and comprising of all Halqa Panchayats of that Block.

(4) The electoral college of the constituency of the Block Development Council shall be prepared in such manner as may be determined by the Election Authority. The electoral college for election of Chairpersons of Block Development Councils shall consist of elected members of all Halqa Panchayats of that Block."

56. Reliance is placed upon the Rule 243 of the Constitution of India to suggest that it was incumbent for the respondents to ensure that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayats to be filled up by elections, so far as practical, be the same throughout the State.

57. It is stated that even when the 73rd amendment to the Constitution earlier was not made applicable in the State of Jammu and Kashmir, yet by virtue of the Presidential Notification dated 06.08.2019, the entire Constitution of India stands applied to the State. For purposes of reference, the aforementioned Presidential Notification is reproduced hereunder:-

"NOTIFICATION

New Delhi, the 6th August, 2019

G.S.R. 562(E):-The following Declaration made by the President is notified for general information:-

DECLARATION UNDER ARTICLE 370(3) OF THE CONSTITUTION

"C.O. 273"

In exercise of the powers conferred by clause (3) of article 370 read with clause (1) of article 370 of the Constitution of India, the President, on the recommendation of Parliament, is pleased to declare that, as from the 6th August, 2019, all clauses of the said article 370 shall cease to be operative except the following which shall read as under, namely :- "370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgment, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article

363 or otherwise."

RAM NATH KOVIND,

President"

58. It is stated that it is perhaps with a view to give effect to the provisions of Article 243(C) of the Constitution of India that an amendment was incorporated by virtue of SRO 521 on 02.09.2019, but despite the fact that the amendment has been incorporated, the effect of the incorporated amendment has not been seen on the ground and that the reservation was effected without keeping in view the provisions of Article 243 (C) of the Constitution of India and amended Rule 102 of the Panchayati Raj Rules.

59. It is also stated that if notice dated 31.08.2019 had to be issued without complying with the requirement of the amended Rule 102 (3), then there was no need for such an amendment to be carried out in September, 2019. It was further reiterated that the amendment was incorporated with a view to bring it in line to the requirement of Article 243(C).

60. Heard learned counsel for the parties.

61. The first challenge of the petitioner is with regard to Schedule 10 of the Panchayati Raj Rules, 1996, insofar as, it prescribes the Director Rural Development as the prescribed authority in terms of Section 27(3) proviso of the Act. The petitioner tried to urge that the powers conferred under Schedule 10 are ultravires of the Act and the Constitution, inasmuch as, the same is made against the mandate of Section 36 of the Act, which envisages that power of superintendence, direction and control of the preparation of electoral rolls for all elections under the Act is vested in the Chief Electoral Officer of the State. It was also urged that the said Schedule 10 was ultravires Section 36-D 2(cc), as this provision envisages the power to determine and delimit Halqa Panchayats by the Chief Electoral Officer.

62. In regard to the first objection, on a perusal of the provisions of the Act as also the Schedule 10, it can safely be held that by prescribing the Director Rural Development as the prescribed authority in terms of Section 27 of the Act and the provisions of the said section have not been violated. Vesting of the powers in the Director Rural Development cannot be said to be in any manner ultravires the proviso (2) to sub-section 3 of Section 27 of the Act, inasmuch as, the said proviso specifically provides the vesting of the power in an authority as may be prescribed. The authority accordingly has been prescribed in terms of Schedule 10. Equally untenable is the plea that by prescribing the authority, the powers of Chief Electoral Officer have been compromised, as otherwise vested in terms of Section 36. As had been clearly stated by learned counsel appearing for the State, the entire process of elections is being conducted strictly under the overall superintendence, direction and control of the Chief Electoral Officer in the State. In my opinion, the plea raised is without any merit and is, accordingly, rejected.

63. Even the contention that there was no determination of the constituencies as was the requirement in terms of Rule 201 of the 1996 Rules is without any basis, inasmuch as, the constituencies were determined vide SRO-522 dated 03.09.2019, which is not under challenge in the present petition without a formal challenge to the SRO 522 the plea that the respondents had failed to comply with the mandate of Article 243C also fails.

64. Mr. Basotra, learned counsel for the petitioner had vehemently urged that there were no rules framed with regard to the methodology, which was required to be adopted for purposes of giving effect to the reservation as envisaged in terms of Section 17 of the Act. It is stated that without the prescribed rules, the prescribing authority could not have adopted a procedure on its own.

65. While it may be true that no rules have been framed in this regard for purposes of setting out the manner and method of providing for reservation for all times, as also for the application of the principle of rotational reservation in future, yet the procedure adopted by the respondents cannot be said to be in any manner unfair, irrational or arbitrary.

66. The main apprehension expressed by learned counsel for the petitioner through the course of argument was that while 1st, 4th, 7th, 10th, 13th ... had been adopted for providing reservation to the offices of the Chairpersons, the said rule may not be followed in future. Although, the apprehension expressed is in the realm of speculation, yet what is stated by the learned counsel for the petitioner cannot be ignored totally. In my opinion, the respondents need to frame rules with a view to lay down the parameters once and for all, prescribing the methodology and manner for giving effect to the provisions of the Act, more so, in regard to Section 27 of the Act.

67. The contention of the learned counsel for the petitioner that objections filed to the impugned notice No. 2 of 2019 were not at all considered by the prescribed authority have been specifically rebutted by Mrs. Shekher, learned Sr. AAG, who states that the objections were considered and rejected despite the fact that there was no statutory obligation on the part of the respondents to necessarily provide an opportunity of being heard to the petitioner.

68. Be that as it may, the petition is found to be without any merit and is accordingly, dismissed along with connected civil miscellaneous application.