
(2019) 12 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Writ Petition No. 18430 Of 2019

Gulab Singh And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 9, 10, 101, 117
Rajasthan General Clauses Act, 1955 — Section 15
Constitution Of India, 1950 — Article 243O, 243O(a), 243K

Citation : (2019) 12 RAJ CK 0076

Hon'ble Judges : Indrajit Mahanty, CJ; Dr. Pushpendra Singh Bhati, J

Bench : Division Bench

Advocate : Sanjay Raj Paliwal, Kunal Upadhaya, Sunil Beniwal

Final Decision : Disposed Of

Judgement

1. The issue which the petitioners seeks to adjudicate is no longer res-integra in view of Division Bench judgment of this Court in Jai Singh Vs. State of Rajasthan & Ors. [D.B. Civil Writ Petition No.17993/2019] decided on 13.12.2019, relevant portion whereof reads as under:

"53. Heard learned counsel for the parties as well as perused the record of the case, alongwith the precedent laws cited at the Bar.

54. In the changed circumstances, while the original challenge was only to the final notification dated 15-16.11.2019, the Court, on submissions and affidavit having been filed on its query, has to now adjudicate upon the notifications post 15-16.11.2019.

55. This Court takes note of the fact that the delimitation exercise was initiated vide notification dated 12. 06.2019, while exercising the powers under Sections 9, 10 and 101 of the Act of 1994.

56. This Court further takes note of the fact that the exercise was having a time schedule, which included raising of proposals by the District Collectors, inviting of

objections, hearing upon the objections and the recommendations to be made by the District Collectors from 15.06.2019 to 02.09.2019. Thereafter, the recommendations alongwith all the representations were placed before a Sub Committee comprising of Six Ministers constituted by the Government of Rajasthan vide order dated 18.09.2019, whereafter the Sub Committee in its deliberations has considered about 5,000 proposals, and out of which about 1500 proposals were accepted.

57. This Court has already noted above the issues raised by various counsels for the petitioners, but broadly, the issues can be classified in two categories; firstly, the grievances arising out of the delimitation exercise prior to 15-16.11.2019 and the grievances arising out of delimitation exercise continuing after 15-16.11.2019 upto 01-02/12/2019.

58. The individual lawyers explained the territorial, geographical, population, distance, logic, practicability and other issues involved in the delimitation upto date of 15-16/11/2019, which does not require any consideration on merits as the iron curtain with the strength of Article 243-O of the Constitution and Sections 101 and 117 of the Act of 1994 has been drawn on 15/16.11.2019.

59. The issues pertaining to the factual matrix of the guidelines and the representations /recommendations/consideration made by the Sub Committee are of factual matrix, and by virtue of Article 243-O of the Constitution read with Section 101 of the Act of 1994, there is a bar in the interference by this Court, after the result of the delimitation was notified.

Admittedly, in all the present writ petitions under adjudication before this Court, the final notification had been issued on 15/16.11.2019.

60. This Court also finds that the bar under Article 243-O of the Constitution of India is completely fortified by the precedent law of State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra) and Bhupendra Pratap Singh Rathore Vs. State of Rajasthan & Ors. (supra).

61. In light of the aforesaid judgments, this Court is not inclined to travel beyond the bar created under Article 243-O of the Constitution of India, and while maintaining the sanctity of the same, deems it appropriate to uphold all the proceedings upto the notification dated 15/16.11.2019.

62. In State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra), the Hon'ble Supreme Court has already held that although Clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including questioning of the validity of any law relating to delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the question of the validity of the delimitation of the constituencies and also the allotment of seats to them, cannot be gone into.

63. However, this Court is perturbed to see that the sanctity of the constitutional

provision of Section 243-O of the Constitution of India read with Section 101 of the Act of 1994 has been breached by the State in an arbitrary, rash and negligent manner, and it is not palpable that number of notifications could be made for continuing the delimitation exercise regarding gram panchayats and panchayat samitis beyond the iron curtain of the final notification issued on 15-16.11.2019.

64. This Court further finds that the changes in the notification can be accepted only to the extent that it is in the shape of corrigendum to deal with the typographical errors, but making fresh consideration/reconsideration/changing of the notification dated 15/16.11.2019 substantially by changing the recommendations and making fresh delimitation, amounts to crossing the constitutionally religious bar of Article 243-O of the Constitution of India.

65. Section 101 of the Act of 1994, on a careful examination, gives power to the State Government for making alteration in the limits of a Panchayati Raj Institution, after one month's notice to be published in the prescribed manner, either on its own motion, or at the request made on its behalf, and in this case, adequate opportunity of hearing and the first notice were in place for the final notification on 15-16.11.2019. But thereafter, the State could not have carried on the delimitation as a continuing process by issuing further notifications.

66. This Court further finds that since the first notice dated 12.06.2019 an exhaustive exercise was conducted, which resulted into a notification in the official gazette on 15/16.11.2019, and thus, the proceedings under Section 101 of the Act of 1994 came to an end. The mandate of Section 101 of the Act of 1994 does not permit the State Government to have multiple delimitation exercises in a continued form after the final notification is issued.

67. As noted above, on 23.11.2019, notification No.3085 and 3086 were issued making corrections in the error which were purely in the shape of a corrigendum. Thereafter, notifications Number 3095 to 3116 were issued on 01.12.2019/02.12.2019 making amendments in the earlier notification of 15-16.11.2019. On 01.12.2019 itself, the State Government again issued notifications Number 3117 including Gram Panchayats which were left out in the original notification of 15-16.11.2019 and also on the same date issued notification No.3118 whereby the original notification of 15-16.11.2019 was altered and left out Panchayat Samitis were also included. Thus, the subsequent notifications, except the one issued for rectification of typographical error, are required to be quashed.

68. The legislative intention behind the constitutional mandate under Articles 243-O, 243-K read with the statutory mandate of Sections 101 and 117 of the Act of 1994 was the reason why this Court is inclined not to permit the State of Rajasthan to itself breach the forbidden area of delimitation after the final notification was issued on 15-16.11.2019.

69. This Court is of the opinion that Section 15 of the Rajasthan General Clauses

Act is merely a power to the State to revise its own orders, and such revision as a normal administrative exercise should be acceptable; but Section 15 itself carves out an exception whereby if there is a provision to the contrary, that means, if there is a bar to revision, the same cannot be taken shelter of by the State to demolish the constitutional and statutory bar. Here the exercise is governed by the Constitution and the Act of 1994, and once a clear bar and procedure have been laid down for judicial review, the violation thereof, in the name of revision, could not be permitted.

70. The State has been unable to answer the repeated queries of the Court as to how on one hand, they are pressing upon that the sanctity of the notification dated 15/16.11.2019 which is a culmination of the delimitation exercise after issuance of notice on 12.06.2019, which cannot be gone into in exercise of the judicial review in light of Article 243-O, and on the other hand, the State itself has breached the sanctity of the notification culminating arising out of Section 101 of the Act of 1994 after one month's notice by issuing subsequent notifications, and amending/recreating and conducting continuous exercise of delimitation in respect of number of gram panchayats and panchayat samitis.

71. In view of the aforesaid observations, while dismissing all the issues pertaining to non-consideration of representations/non-consideration of recommendations/ changes made in recommendations/changes made by the Sub Committee/changes not considered by the Sub Committee/not considered in the proposals/not considered by the District Collectors are held to be not maintainable, as this Court draws a strict line while adhering to the precedent laws of State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra) and Bhupendra Pratap Singh Rathore Vs. State of Rajasthan & Ors. (supra). This Court is conscious that it cannot cross the golden line, which reflects the mandate of the Constitution of India itself, as laid down under Article 243-O. Thus, the petitions are dismissed as far as the pre-proceedings to the notification dated 15/16.11.2019 are concerned. However, at the same time, this Court is of the considered opinion that such golden line prescribed by the Constitution of India read with Section 101 of the Act of 1994 cannot be crossed by the State as it will amount to abuse of process of law, as the delimitation exercise cannot be an ever continuing exercise, and the same has to be completed in one procedure, spanning between the initial notice which in this case was dated 12.06.2019 to the final notification which was 15/16.11.2019 and has to be brought to an end then and there. It cannot be an ever continuing exercise, as it shall jeopardize the sanctity of the mandate of the Constitution, and thus, all the notifications subsequent to the notification dated 15/16.11.2019, pertaining to the issue in question, stand quashed and set aside, except for the notifications which are purely rectifying the typographical errors.

72. All the cases stand disposed of accordingly. All pending applications also stand disposed of."

2. Accordingly, the writ petition is disposed of in terms of aforesaid judgment of

Jai Singh Vs. State of Rajasthan & Ors. (supra). All the pending applications also stand disposed of.