
(2020) 02 RAJ CK 0355

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14248 Of 2019

Jagdish Prasad Saini

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Rajasthan Municipalities Act, 2009 — Section 3, 9, 10, 10(4), 10(5)
Rajasthan Municipalities (Election) Rules, 1994 — Rule 3 Constitution Of India, 1950 —
Article 226, 243O, 243ZG

Citation : (2020) 02 RAJ CK 0355

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : D.S. Rajvi, Sunil Beniwal

Final Decision : Dismissed

Judgement

This writ petition has been filed with the prayer that the delimitation of wards for Municipal Board, Taranagar, Churu, be done as per Annex.5 to 7

and be notified accordingly.

Further a direction has been sought that the recommendation made after the decision of this Court be not accepted qua the reconstitution of the wards

for said Municipal Board, Taranagar and the State be restrained from issuing fresh reconstitution or reconstitute the wards as per the desires of the

persons, who have raised objections.

It is inter alia indicated in the writ petition that the petitioner had approached this Court earlier by filing SBCWP No.13874/2019, which petition came

to be decided by order dated 18.9.2019 based on the communication dated 21.8.2019 issued by the Director, Local Self Government, with the

submission that the petitioner's grievance has been redressed. Based on

which, the petition was disposed of and it was directed that if any of the petitioner's grievance remains, he shall be free to take appropriate remedies.

It is inter alia indicated in the writ petition that for Municipal Board, Taranagar, elections were held in the year 2014, based on 25 wards. A notification

dated 10.6.2019 was issued with reference to provisions of the Rajasthan Municipalities (Election) Rules, 1994 ("Election Rules") for

delimitation of the wards for various municipalities for the proposed elections in the year 2020. On the same day another order (Annex.3) was issued,

whereby, the population of the Municipal Board, the present wards and number of wards as per notification dated 10.6.2019, were indicated, wherein,

for Taranagar, the population was indicated as 32640, the existing wards 25 and the new wards at 35.

Further indication was made that the proposals be prepared in form A, B & C and that various indications / guidelines were given for the preparation /

delimitation of the wards. Based on the same, a public notice dated 5.7.2019 (Annex.5) was issued for delimitation of 35, wards calling for the

objections, which were required to be submitted by 15.7.2019.

Vide Annex.6, various indications were made regarding the total population, SC Population, ST Population and population qua which ward alongwith

residents belonging to SC category etc. Objections alongwith comments dated 22.7.2019 (Annex.9) were prepared by the Executive Officer of the

Municipal Board and apparently sent to the State Government.

By communication dated 21.8.2019, it was indicated by the Additional Director that the disposal of objections made qua the proposals for delimitation

of wards were not logical & as per Rules and, therefore, required the Executive Officer to sent fresh comments on the objections immediately. Based

on which, apparently, the earlier writ petition filed by the petitioner was disposed of by this Court in terms of the communication dated 21.8.2019.

Apprehensive about the conduct of the respondents, a communication (Annex.14) was addressed to the Director, Local Self Government indicating

that a total fresh delimitation was sought to be done, which was not justified.

Pursuant to the communication dated 21.8.2019, it is claimed that the respondents have issued a fresh public notice and has sent the same to the State

contrary to the guidelines indicated in notification dated 10.6.2019. Allegations have been made that the respondents were seeking to change the

wards contrary to the settled guidelines under the pressure from the Local MLA, based on which, the prayer as indicated hereinbefore, has been made.

It is submitted by learned counsel for the petitioner with reference to the various provisions of Rajasthan Municipalities Act, 2009 (‘the Act’)

including Section 3 dealing with the delimitation, Section 9 dealing with the division into wards and Section 10 determination of wards as well as Rule 3

of the Election Rules that once vide Annex.5, the draft was published, the same again cannot be published and the action of the respondents was in

violation of provisions of Section 10(4) & (5) of the Act and, therefore, the draft published by the respondents deserves to be quashed and set aside.

Submissions were made that a look at Annex.AA/3 produced by the respondents, which has been produced as per directions given by this Court,

clearly reveals that the action of the respondents has been wholly incorrect and against the Rules.

With reference to an additional affidavit filed by the petitioner, it was submitted that various illegalities / inaccuracies have been committed by the

respondents, which is reflected from table given by the petitioner and, therefore, on that count also, the action of the respondents in this regard

deserves to be quashed and set aside.

Various submissions were made that the respondents have indulged in exercise in a manner, which clearly reflects that the entire activity has been

undertaken in a malafide manner and, therefore also, the action of the respondents in this regard deserves to be quashed and set aside.

Reliance was placed on State of U.P. & Ors v. Pradhan Sangh Kshettra Samiti & Ors.: 1995 Supp (2) SCC 305, Nabam Rebia v. Deputy Speaker,

Arunachal Pradesh Legislative Assembly & Ors: (2017) 13 SCC 326 and Dhapu Devi v. State of Rajasthan & Ors.: S.B. Civil Writ Petition

No.18077/2019, decided on 17.12.2019.

Learned counsel for the respondents made submissions that the allegations made regarding violation of the provisions have no substance. The

respondents have followed all the provisions meticulously and, therefore, the plea raised by the petitioner in this regard cannot be accepted.

Submission was made that the challenge laid by the petitioner was barred under Article 243-ZG of the Constitution of India and, therefore, the petition

deserves to be dismissed on this count alone.

On the merits, it was submitted that the decision of delimitation was taken on 10.6.2019 (Annex.2), on 5.7.2019 vide Annex.5 the draft proposal for

delimitation was published, to which, 59 objections were received, which alongwith the comments were forwarded on 22.7.2019 by the Executive

Officer vide Annex.9, which was sent back by the Additional Director on 21.8.2019 (Annex.12) requiring the Executive Officer to redo the exercise.

After the earlier writ petition filed by the petitioner was decided on 18.9.2019, on 19.9.2019 vide Annex.R/1, the objections alongwith the comments

were sent, wherein also, the comments were sent qua 59 objections, which were earlier received in time. Alongwith the said comments on the

objections, the draft of delimitation proposal was sent based on the accepted objections.

The Committee of the Local Self Government Department examined the said objections and made recommendations qua the decision made, which

was approved by the State Government vide Annex.R/3 and, therefore, as the respondents have followed the procedure as prescribed under

provisions of Act and the Election Rules, no interference is called for in the present writ petition.

Submissions were also made that no right fundamental or statutory of the petitioner has been violated so as to require interference by this Court under

Article 226 of the Constitution of India. With regard to the various objections raised by the petitioner regarding the formation of the wards raised by

the petitioner in the present writ petition, it was submitted that the petition for the said purpose cannot be maintained as the exercise of delimitation

based on the procedure as prescribed having been completed, the same is not open to be examined.

Reliance was placed on Pradhan Sangh (supra) and Kanhaiya Lal Jhanwar v. State of Rajasthan & Ors.: 2016(3) WLC (Raj.) 443.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The entire petition filed by the petitioner is premised on the fact that the respondents after publishing proposed delimitation vide Annex.5, have issued a

fresh draft, which is in violation of the provisions of Section 10(4) & (5) of the Act.

Provisions of Section 10 of the Act, which deals with the determination of wards, insofar as relevant, reads as under:-

Section 10. Determination of Wards.- (1) The State Government shall by order determine,-

(a) the wards into which each municipality shall, for the purpose of its elections, be divided;

(b) the extent of each ward;

(c) the number of seats, if any, reserved for members of the Scheduled Castes or, as the case may be, Scheduled Tribes and for women members of

such castes and tribes and for members of the Backward Classes and women members thereof; and

(d) the number of wards for women candidates.

(2) .

(3) .

(4) The draft of the order under Sub-section (1) shall be published for filing objections thereto within a period of not less than seven days and a copy

of the same shall be sent to the Municipality concerned for comments.

(5) The State Government shall consider any objection and the comments received under Sub-section (4) and the draft order shall, if necessary, be

amended, altered or modified accordingly, and thereupon it shall become final.

The procedure as prescribed provides for publication of the draft of order for filing objections and whereafter the State Government is required to

consider the objections and the comments received under Sub-section (4) and the draft order, if necessary, can be amended, altered or modified and

thereupon the same becomes final.

As noticed hereinbefore, after publication of the draft notification vide Annex.5 on 5.7.2019 on the 59 objections received, the Executive Officer,

Municipal Board forwarded the same to the State government alongwith his comments on 22.7.2019 (Annex.9). The comments were not found logical

& as per Rules and, therefore, by order dated 21.8.2019 (Annex.12), the same were sent back to the Executive Officer for doing the needful as per

the instructions.

Whereafter vide Annex.R/1 on 19.9.2019, the Executive Officer in response to the letter dated 21.8.2019, sent the comments alongwith the objections

afresh. Vide Annex.R/2, a draft proposal of the delimited wards based on the objections accepted, was also attached.

Only on account of the fact that on the said draft (Annex.R/2), which was prepared based on the determination of objections to the proposal

(Annex.5), it was indicated, it is sought to be argued that the respondents have issued a fresh proposal, which submission is factually

incorrect, inasmuch as, Annex.R/2, as already observed, is based on the outcome of the determination of the objections, which were sent by way of

proposal to the State in terms of Section 10(5) of the Act.

The committee of the State examined the determination made / comments offered by the Executive Officer, which has been placed on record as part

of Annex.R/1 with the additional affidavit dated 22.10.2019 (page 184 of the paper-book) and the same was then approved by the State vide note-

sheet Annex.R/3 (page 172 of the paper-book) on 23.9.2019, pursuant to which, the notification dated 14.10.2019 (Annex.R/2 with additional affidavit

dated 22.10.2019, at page 192 of the paper book), was issued approving the draft order of ward formation.

From the sequence of events / documents observed hereinbefore, the respondents have followed the procedure as prescribed under provisions of

Section 10(4) & (5) of the Act and the plea raised to be contrary by alleging that a totally fresh proposal was initiated by the respondents by issuing a

fresh draft-â?? , , â?? has absolutely no basis and, therefore, the entire plea raised in this regard cannot be accepted.

The submissions made that the respondents have in hot haste and without due consideration have completed the entire exercise also apparently has no

substance inasmuch as once the matter was sent back to the respondents on 21.8.2019, the respondents apparently completed the exercise and as

soon as the earlier writ petition filed by the petitioner came to be decided on 18.9.2019, on the next day, the proposal was sent to the State, where the

same was examined by the Committee and the approvals on various levels took place by 23.9.2019.

The allegations made in this regard, though from the point of time of dismissal of the writ petition may appear to be swift, in view of the fact that the

issue was remanded by the State to the Municipal Board on 21.8.2019 and final approval took place on 23.9.2019, the submissions made in this regard

have little substance.

During pendency of the writ petition on the directions of the Court, the respondents have produced a comparison Annex.AA/3 alongwith the additional

affidavit dated 25.11.2019 indicating the difference qua the comments, which were sent on 22.7.2019 and the comments which were sent on

19.9.2019, which indicates a fresh application of mind on part of the respondents and, therefore, it cannot be said that a mere formality was done by

the respondents.

The submissions made based on the affidavits etc. filed in the present writ petition seeking to question the manner of forming various wards, their

delimitation and the fact that in the opinion of the petitioner, the action of the respondents is not justified, apparently cannot be made subject matter of

the writ petition as the said objections are not open to be determined by this Court in view of express provisions of Article 243-ZG of the Constitution

of India.

Even as per the judgment in the case of Pradhan Sangh (supra) relied on by both the learned counsel, in view of Article 243-O of the Constitution,

which pertains to Panchayats and is *pari materia* to Article 243-ZG of the Constitution of India, the jurisdiction of the Court could only be exercised on

the ground that before the delimitation no objections were invited. It was further held that the delimitation of constituencies and allotment of seats are

not open to challenge in view of bar contained under the said Articles. The same is the ratio of judgment in the case of Kanhaiya Lal (supra).

So far as the judgment in the case of Dhapu Devi (supra) is concerned, therein the Court found violation of provisions of the Act and Rules, which

aspect is missing in the present case.

In view of the above discussion, there is no substance in the writ petition, the same is, therefore, dismissed.