
(2009) 11 RAJ CK 0070
In the Rajasthan High Court

Jai Singh Meena

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Constitution of India, 1950 — Article 243ZG

Citation : (2010) 1 RLW 865 : (2010) 1 WLN 427

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—This writ petition is directed against the delimitation order dated 1.10.09 published in Rajasthan Gazette dated October 5, 2009 whereby the boundaries of Ward Nos. 2, 3, 19, 22, 24 and 25 of the respondent-Municipal Board, Nimbahera have been modified after publication of final delimitation order dated 12.6.09 in the Rajasthan Gazette dated 22.6.09.

2. For the ensuing election of the various municipalities of the State, the process of delimitation of wards was undertaken by the State Government and in this regard, a circular dated 22.12.08 was issued by the State Government for division of wards on the basis of the population as per final returns of census 2001. The total number of seats for the respondent Municipality have been fixed at 30 in terms of provisions of Section 13 of the Rajasthan Municipalities Act, 1959 (in short "the Act of 1959"), and accordingly, the municipal area has been divided into 30 wards.

3. As per the provisions of Sub-section (2) of Section 13 of the Act of 1959, the representation of each ward shall be on the basis of the population of the ward and as far as possible the same is required to be in same proportion as the total number of seats for the municipality bear to its population. As per the last census i.e. census 2001, the population of the municipal area, Nimbahera comes to 53,227 and on division of the said population by the number of seats fixed for

in accordance with law.

7. However, from perusal of yet another communication dated 14.8.09 sent by the Executive Officer of the respondent Board to the Electoral Registration Officer, it appears that the modification and alteration in the wards was insisted upon by the Electoral Registration Officer and therefore, on his telephonic instructions a modified draft delimitation order for ward Nos. 2, 3, 19, 22, 24 and 25 was prepared by the Executive Officer of the respondent Board with the help of Tehsildar, Nimbahera and the same was forwarded to the Electoral Registration Officer. It will be beneficial to reproduce the contents of the letter dated 14.8.09 sent by the Executive Officer, Municipal Board, Nimbahera to the Electoral Registration Officer, Nimbahera, which read as under:

mijksDr fo"k;kUrxZr izlax ds lanHkZ esa fuonsu gS fd uxjikfydk vke pquko 2009 gsrq ernkrk lwph;ksa ds rS;kj djkus ij fuEukafr okMksZ esa ernkrkvks dk vf/kd vUrj vkus ls Jheku~ }kjk nwjHkk"k ij fn;s x;s funsZ"kks vuqlkj Jh eku~ rglhynkj lk- fuEckgsMk ls lg;ksx ,oa ekxZn"kZu izkIr dj ikfydk dfu"B vfHk;Urk Jh "kkafryky vkesVk ls okMZ ua- 2] 3] 19] 22] 24] 25 dh uohu okMZlhek fu/kkZfjr djkbZ tkdj la"kksf/kr izLrko izk:i layXu i= ds Jheku~ dh Isok esa vkns"kkFkZ lknj izsf"kr gS A bl IEcU/k esa jktuSfrd nyksa ls Hkh ekSf[kd ppkZ dh xbZ A

layXu % la"kksf/kr izLrko izk:i 7 izfr A

,l- Mh-

vf/k"kk"kh vf/kdkjh

uxjikfydk] fuEckgsMk

8. It is pertinent to note that the wards in which the difference in number of voters was noticed by the Electoral Registration Officer in communication dated 10.8.09 were ward Nos. 2, 3, 4, 22, 24 and 25, however, the proposal for modification/alterations in the boundaries of the wards was prepared for the ward Nos. 2, 3, 19, 22, 24 and 25. Thus, no modification was proposed in the boundaries of ward No. 4 regarding which the proposal for modification was mooted in the first instance by the Electoral Registration Officer vide communication dated 10.8.09.

9. The proposal for modification/alterations sent by the Executive Officer of the respondent Board was forwarded by the District Collector, Chittorgarh for approval of the State Government vide communication dated 25.8.09 and the same was approved by the State Government vide communication dated 30.9.09 and accordingly, the modified delimitation order dated 1.10.09 modifying the boundaries of the ward Nos. 2, 3, 19, 22, 24 and 25 issued by the District Collector, Chittorgarh was published in the Rajasthan Gazette dated 5.10.09. Hence, this petition.

10. It is contended by the learned Counsel for the petitioner that as per the provisions of Section 9 of the Act of 1959 and so also as per Section 9 of the

Rajasthan Municipalities Act, 2009 ("the Act of 2009"), the delimitation of the wards is required to be made on the basis of the population as per the returns of the latest census. It is submitted that the delimitation of wards of the respondent-Municipality vide order dated 12.6.09 published in Rajasthan Gazette dated 22.6.09 was made on the basis of the proportionate population and there was no occasion for the respondent authorities to undertake the modification/alteration in the boundaries of a few wards on the basis of alleged difference in the number of the voters therein. The learned Counsel submitted that as per the relevant provisions of the Act of 1959, the delimitation of the wards has to be made taking into consideration the geographical limits and the proportionate population then, the difference in number of voters in the various wards is absolutely irrelevant. The learned Counsel submitted that even otherwise the final delimitation order having been published in the Rajasthan Gazette, the respondent authorities had no jurisdiction whatsoever to modify or alter the boundaries of the wards without following the procedure laid down u/s 14 of the Act of 1959. The learned Counsel submitted that a thing to be done in a particular manner has to be done in that manner only and all other modes of doing a thing are necessarily forbidden. Accordingly, it is submitted by the learned Counsel that the entire proceedings taken for modification/alteration of the boundaries of the various wards without following the procedure laid down stands vitiated on this count alone. The learned Counsel submitted that the changes in the boundaries of the ward Nos. 2, 3, 19, 22, 24 and 25 made by the respondent authorities appear to be politically motivated and lacks the bona fide. The learned Counsel submitted that if the difference of the voters was the reason for the modification of the boundaries of these wards then there is no reason as to why the boundaries of the ward Nos. 4, 7, 16, 17, 21, 28 etc. have not been modified where the number of voters are 729, 977, 879, 922, 909 and 919 respectively. In this regard, the learned Counsel has drawn attention of this Court to the details of the number of voters in each ward placed on record as Annexure 9. The learned Counsel submitted that the proposal for modification mooted by the Electoral Registration Officer, Nimbahera was ex facie without jurisdiction and the State Government has seriously erred in accepting the same without application of the mind ignoring the procedure prescribed for the purpose under the law. Accordingly, it is submitted by the learned Counsel that the impugned delimitation order deserves to be quashed and set aside.

11. Per contra, Mr. Anand Purohit, learned Additional Advocate General submitted that on account of incorrect inclusion of certain blocks in different wards, there was vast difference in number of voters therein, therefore, so as to give fair representation to the inhabitants of those wards, the modification/alteration in the boundaries of the ward was absolutely necessary. The learned Additional Advocate General submitted that it is true that the proposal for modification/alteration of the boundaries was initiated on account of the difference in number of voters in the ward Nos. 2, 3, 19, 22, 24 and 25 but, even after the modification/alteration of the boundaries of these wards, the population of these

wards remained unchanged and therefore, no grievance can be raised by the petitioner in this regard, who had never raised any objection questioning the proposed delimitation of wards. The learned Additional Advocate General submitted that it was a case of only correction of the error therefore, the procedure laid down for delimitation of the wards was not required to be followed afresh. The learned Additional Advocate General submitted that the modification/alteration in the boundaries of few wards has been made to ensure the fair representation of each ward and therefore, looking to the objects sought to be achieved, the impugned delimitation order does not warrant any interference by this Court.

12. Mr. Vikas Balia, learned Counsel appearing on behalf of the State Election Commission submitted that the electoral rolls of new wards made after delimitation was prepared by house to house survey between 15.7.09 to 7.8.09 and thereafter, the rolls were read out in all concerned wards from 10.8.09, the printing of the list took place from 17.8.09 to 16.9.09 and the Electoral Registration Officer came out with the draft publication on 22.9.09, after which 1.10.09 was last date for receive the claims and objections. It is submitted that the claims and objections were disposed of by 14.10.09 and the final electoral rolls has been published by the Electoral Registration Officer on 21.10.09. It is submitted that as per the constitutional mandate, the election process for the respondent Board has to be completed before 27.11.09 and if the impugned delimitation order is interfered with by this Court then, it will be difficult to prepare the revised electoral rolls within the available time. It is submitted by the learned Counsel that the election programme has already been notified and the notification inviting the electors to elect the Chairperson and members is scheduled to be issued by tomorrow i.e. 7.11.09 therefore, at this stage, when the elections are so imminent any interference by this Court in the election process shall be violative of the constitutional mandate in terms of Article 243 ZG of the Constitution of India.

13.1 have given my thoughtful consideration to the submissions made by the learned Counsel for the parties and perused the material on record.

14. As per the provisions of Sub-section (1) of Section 13 of the Act, 1959, for the purpose of election to a Board, a municipality shall be divided into such number of wards as equal to the total number of seats fixed under Clause (a) of Sub-section (1) of Section 9. Sub-section (2) of Section 13 provides that representation of each ward shall be on the basis of the population of the ward and shall as far as possible, be in same proportion as total number of seats for the municipality bears to its population. As per Clause (a) of Sub-section (1B) of Section 14 all wards shall as far as practicable, be geographically compact areas. The Act of 1959 stands repealed vide Section 344 of the Act of 2009 but then, the procedure laid down u/s 9 & 10 of the Act of 2009 for division and determination of ward is not different than the procedure laid down under the aforesaid provisions of the Act of 1959.

15. The legislature in its wisdom has used the word "as far as possible" in Sub-section (2) of Section 13 and "as far as practicable" in Sub-section (1B) of Section 14, obviously for the reason that neither the population of the wards can be determined in equal proportion with the mathematical exactitude nor the compactness of the area can be maintained for all wards in a municipality inasmuch as the same shall depend upon the geographical terrain of each municipality. But the fact remains that the proportionate population and the compactness of the area as envisaged under the provisions of the Act of 1959 is foundation for division of wards of a municipality.

16. It is not in dispute that the delimitation of wards for the municipal board, Nimbahera was made by the State Government on the basis of the proportionate population taking into consideration the compactness of the area. It is also the common ground between the parties that no objection was received against the proposed delimitation order and accordingly, the same was finalised by the State Government and the final delimitation order dated 12.6.09 was published in the Rajasthan Gazette on 22.6.09.

17. Undoubtedly, the draft delimitation order published by the State Government after necessary amendment, alteration, modification If necessary, becomes final in terms of Sub-section (3) of Section 14 of the Act of 1959. Therefore, if any alterations, modification or amendment is proposed in the final delimitation order, then, obviously the procedure laid down for delimitation of ward has to be followed afresh. Suffice it to say that any amendment, alteration or modification in the final delimitation order can be made by the State Government, after publication of the draft delimitation order incorporating alterations, modifications or amendments, for filing objections thereto in terms of Sub-section (2) of Section 14 of the Act of 1959. The State Government has no authority to alter or modify the delimitation order suo moto without following the procedure laid down. In the considered opinion of this Court, if any amendment, modification or alteration in the final delimitation order is permitted in the manner it has been effected by the State Government the very purpose of incorporating the provisions of Sub-section (2) of Section 14 of the Act of 1959, giving right to the inhabitants of the municipal area to raise objections against the delimitation of wards shall stand frustrated and the provision itself shall rendered otiose.

18. It is settled principle that where a statute requires to do a certain thing in certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. (Vide Taylor v. Taylor (1876) 1 Ch D 426 ; State of Uttar Pradesh Vs. Singhara Singh and Others, A.R. Antulay v. Ramdas Srinivas Nayak (1984) 2 SCC 326 ; A.K. Roy and Another Vs. State of Punjab and Others,

19. Therefore, the impugned delimitation order altering the boundaries of the wards which has been admittedly issued by the respondents without following the procedure laid down deserves to be quashed and set aside on this count alone.

20. As noticed above, the proposal for alteration/modification of the boundaries of the wards was mooted by the Electoral Registration Officer on the basis of alleged difference in number of voters in few wards i.e. ward No. 2, 3, 4, 22, 24 & 25. The learned Counsel for the petitioner is justified in contending that when the basis for formation of the wards is population, then, the number of voters in a particular ward cannot be a relevant consideration for alteration/modification of the boundaries of the wards. It is to be noticed that the delimitation of the wards is to be made on the basis of the figures of the population as per final returns of last census, therefore, even the population of the wards constituted after eight years of the census, may be much more than the available census figure. In any case, the number of voters in a particular ward is not an index of population of the ward as the percentage of the adults to the population of the ward is bound to vary from ward to ward. Thus, the proposal mooted by the Electoral Registration Officer unauthorisedly for modification/alteration in the boundaries of the wards on account of variance in the number of voters was absolutely mis conceived.

21. It is pertinent to note that the alleged the difference in number of voters in the wards constituted under the final delimitation order dated 12.6.09 exists not only in ward Nos. 2, 3, 19, 22, 24 & 25 but also in other wards, pointed out by the learned Counsel for the petitioner noticed above and the details whereof has been placed on record as Annexure 9. It is pertinent to note that the modification/alteration in the boundaries of ward No. 4 was also proposed by the Electoral Registration Officer vide communication dated 10.8.09, but there is nothing on record to show that why the said proposal was abandoned and boundaries of yet another ward i.e. Ward No. 19 were altered. Be that as it may, the Electoral Registration Officer entrusted with the job of finalisation of electoral rolls of the various wards in terms of the delimitation order after following the procedure laid down had no jurisdiction to inter meddle in the matter and undertake the process of modification/alteration of boundaries of the wards on his own.

22. It is really strange that even the State Government has not applied its mind to the proposed modification/alteration of the boundaries of the wards and has altogether ignored the provisions of Section 14 which prescribes the procedure for delimitation of wards. In considered opinion of this Court, the illegality committed by the respondents in issuing modified delimitation order altering the boundaries of a few wards goes to the root of the matter and no elections can be permitted to be held on the basis of such delimitation order and the same deserves to be quashed and set aside.

23. This takes this Court to consideration of the contention of the learned Counsel for the Election Commission that the election are imminent and at this stage this Court should not interfere in the matter inasmuch as if the delimitation order is quashed, it will not be possible for the Electoral" Registration Officer to revise the electoral rolls and finalised the same in the short span of time

available inasmuch as in view of the constitutional mandate in terms of Article 243 ZG, the election process for the respondent Board has to be completed latest by 27.11.09. It is to be noticed that the preparation of electoral rolls was undertaken by the Electoral Registration Officer on 15.7.09, obviously on the basis of delimitation order dated 12.6.09 published in the Rajasthan Gazette on 22.6.09. Even according to the learned Counsel appearing on behalf of the State Election Commission the draft electoral rolls were published on 22.9.09 inviting objections upto 1.10.09, therefore, it is abundantly clear that the draft electoral rolls were prepared and after consideration of the objections the electoral rolls were finalised on the basis of the delimitation order dated 12.6.09. It is not even the case of the respondents that after publication of the modified delimitation orders for the ward Nos. 2, 3, 19, 22, 24 & 25, the draft electoral rolls inviting objections were published afresh by the Electoral Registration Officer. Moreover, the effect and operation of delimitation order was stayed by this Court vide order dated 21.10.09, therefore, thereafter it was not even open to be acted upon. Thus, on the facts and in the circumstances of the case, in considered opinion of this Court, the contention of the State Election Commission that on account of non availability of the final electoral rolls as per the delimitation order dated 12.6.09, it will not be in position to complete the election process by 27.11.09, is devoid of any merit. Suffice it to say that if the impugned delimitation order is quashed and set aside, it is not going to disturb the constitutional mandate to hold the election before the completion of the tenure of the respondent Board.

24. For the aforementioned reasons, the writ petition is allowed. The impugned delimitation order dated 1.10.2009 published in the Rajasthan Gazette dated 5.10.2009, is quashed. However, it will be open for the State Election Commission to proceed with the Election of Chairperson and Members of Municipal Board, Nimbahera on the basis of delimitation order dt. 12.6.2009 published in Rajasthan Gazette on 22.06.2009. No order as to costs.