
(2015) 07 RAJ CK 0166
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6540 of 2015

Kanhaiya Lal Jhanwar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 243C, 243-C, 243-K, 243-O
Delimitation Commission Act, 1962 — Section 8, 9
Rajasthan Municipalities Act, 2009 — Section 10, 10(1), 10(4), 117, 9
Rajasthan Panchayati Raj Act, 1994 — Section 101, 117

Citation : (2015) 4 CDR 2082 : (2016) 1 WLN 428

Hon'ble Judges : Sunil Ambwani, C.J.; Vijay Bishnoi, J

Bench : Division Bench

Advocate : J.P. Joshi, Senior Counsel assisted by S.D. Purohit, for the Appellant; S.D. Ladrecha, Additional Advocate General, D.D. Chitlangia, Rajesh Joshi, Vikas Balia and Pratishtha Dave, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard learned counsel appearing for the parties.
2. This writ petition has been filed, challenging the impugned order dated 30.04.2015 with a map of delimitation of wards of Nagar Palika Nokha, and the consequential voters list, dated 13.06.2015, summary of which is provided in Annexure-4 to the writ petition, with further prayers to finalize the reconstitution and delimitation of the wards of Nagar Palika, Nokha, District Bikaner, after following the statutory provisions and guidelines/instructions, and then to hold the elections of Nagar Palika, Nokha.
3. The petitioner was an elected member of Nagar Palika, Nokha, Chairman of Nokha Vikas Manch, and also a member of the Rajasthan Legislative Assembly from 2008-2013.
4. It is submitted that delimitation of the wards of the Municipality in the elections, to be held in the year 2015, has not been made in accordance with

Section 9 of the Rajasthan Municipalities Act, 2009 (in short, "the Act of 2009"), and the Rules of 1994, made thereunder, inasmuch as before re-arranging the wards increasing the numbers from 30 to 35, a draft order under sub-section (1) of Section 10, providing for the wards into which each Municipality shall, for the purpose of elections, be divided; the extent of each ward; the number of seats; and the number of wards for women candidates, was not published, inviting objections within a period of seven days, with a copy of the same sent to the Municipality concerned for comments under sub-section (4) of Section 10, on account of which objections could not be filed by the petitioner, and cannot be decided under sub-section (5) of Section 10 of the Act of 2009, vitiating the entire exercise of delimitation of the wards.

5. It is submitted that the wards should be geographically compact areas, as far as practicable, without any pockets. Sub-section (2) of Section 9 of the Act of 2009, provides for representation on the basis of the population of that ward and shall, as far as possible, be in the same proportion as the total number of seats for the Municipality bear to its population. For this purpose, the guidelines issued by the State Government by executive orders, provide that there should not be more than 10% population in each ward, and that as far as possible, there should be no pocket wards.

6. A preliminary objection has been taken by learned counsel appearing for the State Election Commission of Rajasthan, that the term of the Municipality is coming to an end on 31.08.2015, and the State Election Commission has to hold the elections before that date, for which the State Government has issued a Notification, providing for delimitation of the constituencies, after which the voters list was required to be published. The Notification provided for 60 days time for formation of wards and publication of formation of wards, including inviting of objections and forwarding of recommendations to the State Government within 60 days, beginning from 1st January, 2015 to 1st March, 2015; approval of recommendations of the Collector within next 30 days, beginning from 2nd March, 2015 to 31st March, 2015; and final publication in Official Gazette within 30 days, beginning from 1st April, 2015 to 30th April, 2015; and the lottery, at district level, for reservation of the wards, within 15 days from 15th June, 2015 to 30th June, 2015.

7. It is submitted that Article 243ZG of the Constitution of India, provides for Bar to interference by Courts, on validity of any law relating to the delimitation of constituencies, or the allotment of seats to such constituencies, in electoral matters. Article 243ZG, is quoted as below:-

"243ZG. Bar to interference by courts in electoral matters. - Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

8. It is submitted by learned counsel appearing for the State Election Commission of Rajasthan, that the Notification relating to delimitation of wards, is a law within the meaning of Article 243ZG of the Constitution of India, and that this Court has interpreted the provisions of Article 243-O(a), in the matter of Panchayat elections, with the help of the judgment of the Supreme Court in State of U.P. & Ors. Vs. Pradhan Sangh Khesttra Samiti & Ors., 1995 Suppl.(2) SCC 305, in which it was held that after publication of the notification of delimitation, the Bar under Article 243-O(a), which is *pari materia* with the Bar under Article 243ZG of the Constitution of India, operates. The Court refused to interfere in the matter of delimitation of constituencies after publication of the notification of delimitation of Panchayat areas, in which the writ petitions were filed prior to notification of elections.

9. Learned counsel appearing for the State-respondents submits that the notification of the dates, as aforesaid, of delimitation of the constituencies, provided sufficient opportunities to all persons, who were interested, and for which the proposed delimitation of wards with population was available in the Office of the Nagar Palika, Nokha, in which the wards were proposed to be increased from 30 to 35, from amongst the population of 62,699. It is not denied that the Notification declaring delimitation of wards and the order dated 01.01.2015, to that effect, was not within the knowledge of the petitioner, who is an active politician, but he did not take interest in filing objections. No objections were filed by any political party. The Congress party and Bhartiya Janta Party(BJP), agreed to the proposed delimitation of wards, on which the objections and comments of the Collector were sent to the State Government, and which has issued the Notification, under challenge in this writ petition.

10. It is submitted by learned counsel appearing for the petitioner that there was no notification inviting objections in pursuance to Section 10(4) of the Act of 2009, in which a draft order was published for determination of the wards. He submits that there are pockets in the wards, carved out with the help of candidates, who have their committed voters in those particular pockets. Further, the variation of the number of voters in the constituencies, as found, is upto 70%, whereas guidelines provide for variation only upto 10%.

11. We have heard learned counsel appearing for the parties and do not find any good ground to interfere, at this stage, when a Notification of delimitation has been published.

12. The Notification of delimitation of wards is a law within the meaning of Article 243ZG of the Constitution, and for this purpose, we may rely on the judgment of the Division Bench of this Court in D.B. Civil Writ Petition No. 8157/2014 - Mushe Khan & Anr. Vs. State of Rajasthan & Ors. decided on 19.12.2014, following the

judgment of the Hon"ble Supreme Court in State of U.P. & Ors. Vs. Pradhan Sangh Khesttra Samiti & Ors., wherein it was held as follows:-

10. In State of U.P. & Ors. V/s Pradhan Sangh Khesttra Samiti & Ors. (supra), the Supreme Court held in paragraph 46 as follows:

"46. What is more objectionable in the approach of the High Court is that although Clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the 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 High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in the connection, refer to a decision of this Court in Maghraj Kothari Vs. Delimitation Commission & Ors. In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Sections 8 and 9 of the delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or 9 of the Delimitation Commission Act and published under Section 10(1) of that Act is not part of an Act of Parliament, its effect is the same. Section 10(4) of that Act puts such an order in the same position as a law made by the Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article 327 and Sections 2(kk), 11F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August, 1994."

11. The Division Bench at Jaipur in Bhupendra Pratap Singh Rathore V/s State of Rajasthan & Ors. (supra) has held as follows:-

"Keeping in view the law laid down by the Apex Court, in our considered view,

the gazette notification dt. 05.11.2014 relating to delimitation of Panchayat area; or formation of constituencies in the said area; or allotments of seats to the constituencies is a legislative act in nature and could neither be challenged nor the court can entertain such challenge and in view of the law declared by the Apex Court, prohibiting courts to entertain challenge in view of Art.243C, 243-K and 243-O in respect of the above aspects, raised by the petitioners pertaining to constitution/reconstitution/delimitation of Panchayat areas under the gazette notification dt. 05.11.2014 cannot be entertained by this court u/Art.226 of the Constitution and the objection and contentions canvassed by the petitioners in view of Art.243-C, 243-K read with 243-O coupled with law declared by the Apex Court, is wholly devoid of substance.

So far as the objection raised by counsel for petitioner that in the judgment cited by the Apex Court, as there was a clear prohibition of S.10(2) of the Delimitation Act, the writ petitions are maintainable as the Delimitation Act is not applicable in the facts & circumstances of the instant case. The objections raised is of no substance for the reason that under 73rd amendment to the Constitution, while introducing Part-IX bar to interference by courts in electoral matters u/Art.243-O(a) and corresponding amendments made in the Rajasthan Panchayati Raj Act, 1994 while functioning for delimitation/alteration of the Panchayati Raj Institutions are regulated in terms of S.101 of the Act, 1994 and at the same time, there is a bar to interference by courts in the matters relating to delimitation of constituencies and wards u/S.117 of the Act, 1994 and that being so, the principles laid down by the Apex Court are applicable in the facts & circumstances of the instant case and the gazette notification dt. 05.11.2014 being a legislative act in nature and keeping in view the bar to interference in the matters relating to the delimitation of the constituencies u/Art.243-O(a) of the Constitution and so also S.117 of the Act, 1994, the submission made by the petitioner suffers lack of merit.

In our considered view, we find substance in the preliminary objections raised by the respondents which deserve worth acceptance and keeping in view the mandate of Art.243-O(a) of the Constitution read with S.117 of the Act, 1994, once a notification of delimitation of constituencies dt. 05.11.2014 has been published in the official gazette u/S.101 of the Act, 1994, it has got the force of law and going by the effect of Art.243-O(a), interference by courts in respect of delimitation of constituencies is barred. Such is the importance of the said notification and the non-obstante clause therein is important and become operative.

Consequently, all the writ petitions lack merit and being not maintainable accordingly stand dismissed. No costs."

12. In all the cases before us, as in the writ petitions before the Division Bench at Jaipur, the draft proposals for de-limitation were issued and objections were invited. The period of objections was reduced in view of urgency to complete the election process before 23rd January, 2015. In some of the cases, allegations

have been made that the guidelines for minimum and maximum population and the distance for the proposed headquarter have been violated. In some of the cases, it is stated that the objections were not considered. However, in none of the cases, it is stated that the objections were not invited or that the objections were not submitted and that no hearing was given.

13. We are in respectful agreement with the reasoning given in the judgment of the Division Bench of this Court at Jaipur in Bhupendra Pratap Singh Rathore V/s State of Rajasthan & Ors. (supra) and arrive at the same findings that the mandate of Article 243-O(a) of the Constitution of India read with Section 117 of the Act of 1994, creates a bar on the interference by the Courts in respect of delimitation of constituencies.

14. All the writ petitions are consequently dismissed."

13. In the present case, a provisional voters list has been published on 13.06.2015, on which the objections were received and are pending consideration. This writ petition was filed on 23.06.2015, in summer vacations, much after the Notification of delimitation published on 30.04.2015, and the provisional voters list was also published on 13.06.2015. It is admitted that the petitioner had not filed any objections to the delimitation of the wards. The explanation given for not filing the objections, namely that a notice was not published in the newspapers, or by any other means, inviting objections, is, in our opinion, not satisfactory, inasmuch as the Government Order dated 01.01.2015 was published in the leading newspapers, providing for elections of Local Bodies for the year 2015-16, was within the knowledge of the petitioner. He was aware that the wards are proposed to be increased from 30 to 35. Despite being an active politician, he did not choose to either visit, or to find out from the Office of the Collector about the delimitation of the wards and the number of voters. He chose to file the writ petition after the entire period of filing the objections was over, and the delimitation Notification and the provisional voters list was also published.

14. Along with the reply, the State of Rajasthan has also filed the consents given by the Congress party and the BJP, for delimitation, which clearly suggests that sufficient opportunity was given to all concerned including the petitioner, to file the objections. No one raised any objection to the delimitation of wards in Nagar Palika, Nokha, and on which, the State has finalized the Notification.

15. We are of the view that on both the grounds, firstly that the petitioner did not file any objection despite knowledge of the period, within which the delimitation of the increased wards has to be finalized, and further on the Bar created by Article 243ZG of the Constitution of India, no interference should be made in the matter.

16. The writ petition is, accordingly, dismissed.