
(2012) 04 P&H CK 0191

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No"s. 6933 and 6950 of 2012

Lakhbir Singh Sehme

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 243K, 243P(g), 243P(g), 243T
Punjab Municipal Act, 1911 — Section 13A, 13A(2), 3(4c)
Punjab Municipal Corporation Act, 1976 — Section 2(53A), 35, 38, 381(2), 6
Punjab State Election Commission Act, 1994 — Section 17, 35

Citation : (2013) 2 RCR(Civil) 413

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Advocate : D.S. Pheruman, for the Appellant; Sandeep Moudgil, DAG, Punjab.
for the Respondent Nos. 1 to 3, Mr. Ashok Kumar Bajaj and Mr. Sandeep
Khunger, Advocates for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of Civil Writ Petition Nos. 6933 and 6950 of 2012 as common questions of law and facts are involved in these cases. The petitioners have sought a writ of mandamus for directing the respondents to ensure delimitation of Wards of the Municipal Corporation as per Census 2011 before publication of the Notification u/s 35 of the Punjab State Election Commission Act, 1994 of the election schedule.

2. It is averred by the petitioners that the first meeting of the elected Councillors of Municipal Corporation, Amritsar, was held on 08.09.2007. The duration of the term of the Councillors of the Corporation is five years as per Section 7 of the Punjab Municipal Corporation Act, 1976 (for short "the Act"). It is averred that the total number of the elected members of the Corporation is to be determined by the Board under the Clause 4 of the Delimitation of Wards of Municipal Corporation Order, 1995 (for short the Order). The said provision contemplates that the Delimitation Board shall readjust the wards as and when the limits of the

City are altered or there is increase in the population of the City or there is abnormal variation in population or voting figures at some of the wards of the City necessitate such readjustment.

3. It is pleaded that on the basis of the Census of the year 2001, the number of the elected councillors for a Corporation were determined as 65 as notified on 29.03.2004. The reservations were also made in terms of Section 6 of the Act. But now there is increase in the population as per Census concluded in the year 2011, which necessitates the increase of wards. The notification dated 30.9.2006 contemplates that if the population is up to 15 lakhs, the number of elected councillors shall be 75. Since the population of Amritsar is said to be 12, 24, 616 as per the 2011 Census, therefore, the elections can be held only after redetermining the number of wards. The petitioners have also challenged the manner of reservation of the seats of the women and Scheduled Cases in the present petitions.

4. In the short affidavit filed on behalf of the respondents, it has been averred that Department of Local Government has issued a notification dated 20.04.2012 for holding general elections to elect the members of Municipal Corporations of Amritsar, Jalandhar, Ludhiana and Patiala by 2nd week of June, 2012 in terms of Section 7A of the Act. Such notification has been appended with the affidavit as Annexure R-2/1. It has also been averred that the State Election Commission vide order dated 20.04.2012 (Annexure R-2/2) has directed the Chief Electoral Officer, Punjab, to conduct the general elections of the Municipal Corporations of Amritsar, Jalandhar, Ludhiana and Patiala on the basis of the latest electoral rolls to be prepared with reference to 01.01.2012, as the qualifying date on the basis of the electoral rolls of the Punjab Vidhan Sabha.

5. Learned counsel for the petitioners has raised the following arguments:-

(i) That the elections have been ordered to be conducted without dissolution of the Municipal Corporation, the normal term of which is to be expired on 7th September, 2012 and that the new house is to assume office within 30 days of the election.

(ii) That there is increase in the population on the basis of Census of 2010-11. Therefore, the elections cannot be conducted without delimitation of the wards in terms of Clause 4 of the Orders. In the absence of such delimitation, the right of the inhabitants of the area of the Municipal Corporation to elect 75 Municipal candidates is defeated.

(iii) That without preparing the electoral rolls for the election to the Municipal Corporation on the basis of latest Census, the conduct of the election would be wholly illegal.

(iv) That reservation roster prepared on the basis of the last Census is not rational and logical which cannot be followed in the subsequent elections.

6. We have heard learned counsel for the parties at some length and found the

present writ petition to be not maintainable.

7. The first argument of the learned counsel for the petitioners is that the Elections are proposed to be held in June 2012. The Municipal Corporation is required to be constituted within one month, therefore, the duration of the Municipal Corporation would be cut down which is not permissible.

8. We do not find any merit in the said argument. Article 243-U of the Constitution of India provides for duration of the Municipalities. Clause 3 of the said Article contemplates that the elections shall be completed before the expiry of the duration specified in Clause 1 of the said Article. In terms of the said provisions, Section 7 of the Act has fixed the tenure of the Municipal Corporations as five years from the date appointed for its first meeting and no longer. The tenure of the Corporation is to come to an end on 07.09.2012. Therefore, before the said date, the State Government is under Constitutional obligation to complete the election process for the Municipal Corporation.

9. The argument that the Municipal Corporation is required to be constituted within one month from the date of the election is not supported by any statutory provision. In fact, Section 38 of the Act deals with election of Mayor, Senior Deputy Mayor and Deputy Mayor. Section 38(2) contemplates that the election to such posts shall be conducted at a meeting of the Corporation to be convened immediately after the meeting held for making and subscribing oath or affirmation by the Councillors u/s 35 of the Act but not later than one month from the date on which election of the councillors is notified u/s 17. Punjab Act No. 12 of 1994 has omitted Section 17 of the Act. Section 35 of the Act provides for Oath or affirmation by councillors. There is no time limit fixed for Councillors to take an oath or affirmation after the elections. The learned counsel for the petitioner could not point out any statutory provision to support the argument that the remaining term of the existing Municipal Corporation shall come to an end before the stipulated period. Therefore, even if the elections are completed in the month of June 2012, the constitution of the Corporation can be made on completion of its tenure.

10. The second argument of learned counsel for the petitioners is that there is increase in the population as per Census of 2011, therefore, not only the total numbers of elected councillors are required to be increased but also fresh delimitation of the wards is required to be conducted. Mr. Moudgil controverted the said argument and asserted that the Census of the year 2011 has not been finally published. He has produced a booklet published by the Census of India in the year 2011, which is a "Provisional Population" of Punjab. Even the web site of the Census of India shows that the Census figures of 2011 are provisional. Since the Census is in the process of finalization, therefore, neither the number of the elected councillors is required to be increased nor the delimitation of wards is required to be determined in terms of Clause 4 of the Delimitation of Wards of Municipal Corporation Order, 1995.

11. Some of the relevant provisions of the Constitution read as under:

243-P. Definitions.-In this Part, unless the context otherwise requires,

(a) ***

(g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

243-ZG. 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 243-ZA 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.

12. The Hon''ble Supreme Court in Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, prior to insertion of the said provision has examined the Article 329 of the Constitution and held that the revision of electoral rolls, either intensive or summary, is undertaken by the Election Commission does not have the effect of putting the electoral roll last published in cold storage. The revision of electoral rolls is a continuous process which has to go on, elections or no elections. The crux of the matter is that if an electoral roll is not revised, its validity and continued operation remain unaffected, at least in a class of cases. Insofar as the electoral rolls are concerned, there is never a moment in the life of a political community when some electoral roll or the other is not in force.

13. The Court observed "the important point which must be borne in mind is that whether or not a revision of an electoral roll is undertaken and, if undertaken, whether or not it is completed, the electoral roll for the time being in force must hold the field. Elections cannot be postponed for the reason that certain claims and objections have still remained to be disposed of. Then, claimants and objectors could even evade the acceptance of notices and thereby postpone indefinitely the decision thereon. The holding of elections to the Legislatures, which is a constitutional mandate, cannot be made to depend upon the volition of interested parties". It was also observed that:

27. On the question as to the connotation of the word election in Article 329(b), we may point out three decisions of this Court, one of which is N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, referred to above, the other two being Rampakavi Rayappa Belagali v. B.D. Jatti AIR 1971 SC 1348 and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . It was held in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, that word election is used in Article 329(b) in the wide

sense of covering the entire process culminating in the election of the candidate. Fazi Ali, J., who spoke for the Court in that case, has referred to a passage in Halsbury's Laws of England to the following effect: (SCR p. 227)

It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is reasonably imminent. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion.

In Rampakavi Rayappa Belagali Vs. B.D. Jatti and Others, , it was held that the scheme of the Act of 1950 and the amplitude of its provisions show that the entries made in an electoral roll of a constituency can only be challenged in accordance with the machinery provided by the Act and not in any other manner or before any other forum unless, some question of violation of the provisions of the Constitution is involved. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Krishna Iyer, J., speaking for the Constitution Bench, has considered at great length the scope and meaning of Article 329(b) of the Constitution. Describing that article as the "Great Wall of China", the learned Judge posed the question whether it is so impregnable that it cannot be bypassed even by Article 226. Observing that "every step from start to finish of the total process constitutes election, not merely the conclusion or culmination", the judgment concludes thus: (SCC p. 427, para 26)

The rainbow of operations, covered by the compendious expression election, thus commences from the initial notification and culminates in the declaration of the return of a candidate.

14. The Hon'ble Supreme Court in R.C. Poudyal and Others Vs. Union of India and others, held that delimitation laws made under Article 327 of the Constitution of India are immune from the judicial test of their validity and that the process of allotment of the seats and constituencies is not liable to be called in question in any Court. Part-IXA was inserted by 74th Amendment in the Constitution in relation to the municipalities. The corresponding provisions that delimitation shall not be questioned, has been provided in Article 243-ZG as reproduced above.

15. After 74th Amendment, the Punjab Municipal Corporation Act has been amended. The words election and population have been defined in the Act. The relevant clauses from the Act read as under:

2. Definitions-In this Act, unless the context otherwise requires:

(14) election means and includes the entire election process commencing on and from the date of notification calling for election of Councillors and ending with the date of declaration and notification of results thereof.

*** (35-a) population means the population as ascertained at the last preceding Census, of which the relevant figures have been published;

7-A. Power of Government to direct holding of general elections-

(1) Subject to the provisions of this Act and the rules made thereunder, the Government may, by notification, in the Official, Gazette, direct that a general election or an election to fill a casual vacancy of the Councillors of the Corporation, shall be held by such date as may be specified in the notification and different dates may be specified for elections for different Corporations or group or groups of Corporations.

(2) As soon as a notification is issued under subsection (1), the State Election Commissioner shall take necessary steps for holding such general election.

16. The Hon'ble Supreme Court in Anugrah Narain Singh and Another Vs. State of U.P. and Others, examined the said provisions and also considered the argument that elections are required to be conducted as per population ascertained at the last preceding census of which the relevant figures have been published in terms of Article 243P(g). The Court considered the Local Act and held to the following:

34. Moreover, the U.P. Act of 1959 was amended to make it consistent with the provisions of Part IX-A of the Constitution. Population was defined in Section 2(53-A) to mean "population as ascertained at the last preceding census of which the relevant figures have been published". This is identical to the definition given in Article 243-P(g). Section 32 which deals with delimitation, inter alia, provides that the State Government shall by order determine the number of seats to be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and for women. Section 7 lays down that in every Corporation, seats shall be reserved for Scheduled Castes, Scheduled Tribes and Backward Classes. There is a second proviso to Section 7 which lays down that if the figures of Backward Classes are not available, their population may be determined by carrying out a survey in the manner prescribed by the rules. These provisions come within the ambit of the phrase "any law relating to the delimitation of the constituencies or allotment of seats to such constituencies". The validity of this law cannot be challenged because of the protection given by Article 243-ZG of the Constitution. Therefore, the question whether the survey made by the State Government to ascertain the figures of persons belonging to Backward Classes was lawful or not cannot be raised in any Court.

35. Lastly, the Court on no account should have directed postponement of the elections by the impugned judgment and order dated 13-11-1995. On 11-10-1995, the notification for holding the municipal elections was issued. 16-10-1995 to 20-10-1995 was the period during which the nomination papers could be filed. 24-10-1995 was the last date for withdrawal of nomination papers. Voting was to take place between 17-11-1995 to 20-11-1995. The writ petition was filed as late as 26-10-1995 on the allegation that there were defects

in the electoral rolls, delimitation of constituencies and reservation of seats. A similar writ petition moved before the Lucknow Bench of the Allahabad High Court (WP No. 2997 of 1995) had been dismissed by the Court on 18-10-1995. Barely one week before the voting was scheduled to commence, the Court decided to intervene in the matter regardless of the repeated warnings given by this Court in a number of earlier decisions. The Court decided to intervene in the matter and stop the election process while it was nearing completion. In Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, it was held that the Court should not intervene even when the elections were imminent. Here, the election was well under way.

17. A Division Bench of this Court in the case Pran Nath Bhatia and others Vs. State of Punjab and others, Pran Nath Bhatia v. State of Punjab held that the delimitation cannot be challenged after the election process has started.

18. We find force in this submission. Section 8 of the Act of 1976 dealing with delimitation of wards and clause (8) of the Order of 1959 does not lay down that an order made under clause (8) of the order of 1995 upon reaching finality will have the force of law and shall not be questioned in any court of law. Keeping in view the observations of their Lordship in paras 24 and 25 in Anugrah Narain Singh's case (supra), which have been reproduced above, it is held that the order issued under clause (8) of the Order of 1995 is not beyond challenge by virtue of Article 243-ZG but such a challenge can be made before the process of elections is put into motion and soon after the final order is passed.

18. In J and K National Panthers Party Vs. The Union of India (UOI) and Others, , the Hon'ble Supreme Court quoted from R.C. Poudyal case (supra), wherein the claim of the claim of the petitioner was to carry out delimitation as a result of the census operation being carried out. The court held that the concept of one person one vote to be tolerant of imbalances and departures from a very strict application and enforcement. The Court concluded to the following effect:-

22. On a perusal of the aforesaid principles as laid down by this Court in the Constitution Bench judgment in Poudyal case, we are of the opinion that a right to cast vote in a valuable right but to demand any uniform value of ones voting right through the process of delimitation, disregarding the statutory and constitutional dispensation based on historical reasons is not a justiciable right.

19. Referring to Section 142 of the Constitution of Jammu & Kashmir, corresponding to Article 329-A of the Constitution of India, the Court observed as under:-

24. It is, therefore, clear that there is an express constitutional bar to any challenge being made to delimitation law which is made under the constitutional provisions. Therefore, the substantial challenge of the appellant in this proceeding is not to be entertained by any court, including this Court. The other aspect of the question is that the amendment to Section 47(3) of the Constitution of J. & K. violates the basic structure of the Constitution. This

challenge is also not based on a sound principle.

20. Lakhbir Singh Sehme, one of the writ petitioner had earlier invoked the writ jurisdiction of this Court raising similar argument, as in the present case, by filing CWP Nos. 10151 & 10152 of 2002. This Court directed that fresh voters list and delimitation of wards be completed within four months. Since the process was not completed, the petitioner filed a miscellaneous application and on such application, this Court passed a detailed order, which is reported as Lakhbir Singh Sehme Vs. State of Punjab and Others . The Court considered the fact that delimitation has been done on the basis of 1991 census and the same cannot be done afresh in view of the time constraint. It also considered that provisional figures of census cannot be taken into consideration. The Court also held that in view of bar of Article 243-ZG of the Constitution, the petition is not maintainable. The Court considered, inter alia, the following two questions:

- (1) Whether the delimitation is a must before every election and whether in absence of the delimitation, proposed election should not be allowed to be held;
- (2) Whether absence of published figures of population is a valid ground for not holding delimitation;

21. The court held that there is nothing to show as to in what manner, the petitioner will be adversely affected, if the elections proceed as per the existing delimitation. It is desirable to have a fresh delimitation, but mere absence of delimitation cannot be a ground for the same being done prior to the proposed election.

...We, therefore, hold that though delimitation has to be carried out from time to time, but, merely because delimitation has not been carried out, the same cannot be a ground for stalling the election, which may have fallen due, even though this cannot be laid down as an inflexible rule. This being the legal position, we are unable to direct that the election be not held till the delimitation is carried out. We, however, direct that delimitation be carried out as early as possible, particularly in view of undertaking already given.

22. The Division Bench also examined the requirement of published figures of population. The court held that the definition of population given under Article 243-P(g) could be upheld for the purpose of Article 243-T and that the different meaning to the term population in the rules 2(f) of the Order could be upheld in view of the judgment of the Supreme Court in Anugrah Narain Singhs Case (Supra). It was held to the following effect:-

21. Coming to the next question of requirement of published figures of population being available, we are of the opinion that the definition of population under Article 243-P(g) cannot be ignored. Article 243-ZF requires that all existing laws relating to municipalities which are inconsistent with 74th amendment of the Constitution will continue till amendment is made or till the expiry of one year from the commencement of constitutional amendment. The amendment

came into effect on 24.4.1993. Article 243-ZA provides for vesting of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the municipalities in the State Election Commission constituted under Article 243-K. Article 243-ZG debars challenge to any election except by an election petition.

22. In Anugrah Narain Singhs case (supra), it was observed that definition of population in a local law, which was different than the definition of population given under Article 243-P(g) could be upheld for the purpose of Article 243-T. Thus, different meaning to the term population in the rules 2(f) in 1995 rules of the State could be upheld in the circumstances mentioned in judgment of the Supreme Court in Anugrah Narain Singhs case (supra). For all other purposes, definition of population is given in Article 243-P(g) of the Constitution will prevail.

23. In the present case, in terms of Section 7-A of the Act, the State Government has issued notification on 20.04.2012. The election process has started with the publication of the aforesaid notification. The State Election Commission has decided that electoral rolls for Punjab Vidhan Sabha prepared on 01.01.2012 shall be the electoral rolls for the election to the Municipal Corporation. The elections to the State Legislature have been held only in the month of February, 2012. Therefore, the said Rolls are the most recent rolls and relevant for the elections of the Municipal Corporation.

24. Similarly, fresh preparation of the electoral rolls is not necessary, as it has been decided by the Election Commission that the electoral rolls, as prepared for the election of Punjab Vidhan Sabha shall be used for the purpose of election of Municipal Corporations with reference to 01.01.2012, as the qualifying date.

25. A Full Bench of this court in Prithvi Raj Vs. State Election Commission and Others, has held that the jurisdiction of this Court stands barred, when a notification u/s 13-A of the Punjab Municipal Act, 1911 correspondence to Section 7-A of the Act is issued. It is held to the following effect:

21. A conjoint reading of the provisions of Constitution, the Municipal Act and the Election Commission Act leads to a singular conclusion, namely, that once an election has been notified u/s 13-A(2) of the Municipal Act, an "election", as defined in Section 3 (4-c) thereof, can only be called into question, by way of an election petition, filed in accordance with the provisions, and the mode and manner, as set out in the Election Commission Act.

In view of the judgments referred to above, the present writ petitions have not merit. The same are accordingly dismissed.