
(2002) 04 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : C.M. No's. 10151-52 and 11593 of 2002 and Civil Writ Petition No. 17874 of 2001

Lakhbir Singh Sehme

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Punjab Municipal Corporation Act, 1976 — Section 8, 9
Punjab Municipal Corporation Rules, 1995 — Rule 2, 35

Citation : (2002) 3 RCR(Civil) 52

Hon'ble Judges : J.S. Khehar, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : M.L. Sarin and B.S. Jaswal, for the Appellant; Harbhagwan Singh, General, for the Respondent

Judgement

Adarsh Kumar Goel, J.—C.M. No. 10152 of 2002 has been filed u/s 151 of the CPC for recalling order dated 20.11.2001 passed by a Division Bench of this Court in C.W.P. No. 17874 of 2001.

2. Before dealing with the said application, it is necessary to mention brief background preceding the filing of the present application.

3. A writ petition was filed for issuance of a direction to prepare fresh voters list of each of the wards and to divide wards as per Section 8 of the Punjab Municipal Corporation Act, 1976 (for short, the Act).

4. It was stated in the writ petition filed on 8.11.2001 that the petitioners were prospective candidates for Municipal elections to be held for Amritsar Municipal Corporation in May, 2002 and while earlier voters list was prepared in the year 1996, thereafter there was sea change in the number of voters; number of voters had gone up from six lacs to more than eight lacs; some voters have died, some have shifted from one place to another. It was further stated that there were 60 wards in the city and though Section 8 required that the city should be

divided in such a way that population of each ward is, as far as possible, same throughout the city and since there has been uneven growth of population, population of different wards was different; while in some wards the population was 6000 to 9000, while in others it was more than 16000 and if non-registered votes are taken into account, it may be more than 20000. Annexure P-1 was annexed with the petition to show population in different wards.

5. Notice of motion was issued and a reply was filed by the Joint Secretary, Department of Local Government, Punjab wherein it was stated that the Government has already decided to have fresh voters list and delimitation of wards was to be completed approximately within four months.

6. Vide order dated November 20, 2001 the writ petition was dismissed as infructuous in view of stand taken in the reply.

7. It appears that inspite of stand taken in reply to the writ petition to undertake fresh delimitation of wards and to complete it within four months, this course was not adopted and vide letter dated 21.3.2002, Annexure P-10 to the application, Election Commission was informed that the delimitation need not be done for the elections of Municipal Corporations of Amritsar and Ludhiana, as final published figures of 2001 census were not available. Aggrieved by the said letter, this petition has been filed.

8. In the application now filed i.e. C.M. No. 10152 of 2002, it is stated that the Director, Local Bodies had issued instructions to Commissioner, Municipal Corporation on 14.12.2002 to send names of five members out of election Councillors for constitution of a board for carrying out delimitation and though some staff was deputed for assessing the total population, the work of delimitation was completed to the extent of more than 60 percent, a decision was lateron taken to go to the election without delimitation of wards, ft is stated that action of respondents in deviating from the earlier decision amounted to playing fraud on the Court and since fresh voters list was being prepared there was no difficulty in dividing the wards in equal voters as per Section 8 of the Act.

9. C.M. No. 10151 of 2002 has been filed for restraining the respondent from issuing any process of election during the pendency of C.M. No. 10152 of 2002.

10. Notice of application was issued to the State of Punjab and a reply has been filed, alongwith an application being C.M. No. 11593 of 2002 for extension of time of four months from the date final published figures of census becomes available for delimitation of wards. It is stated that the last elections were held on 27.4.1997 and first meeting of the elected body was held on 27.5.1997 and therefore, elected body has to be constituted on or before 27.5.2002 in view of mandate of Article 243-U of the Constitution. It is stated that delimitation had already been done on the basis of 1991 census and in view of time constraint, delimitation could not be done afresh, when fresh figures of census were not available. Cognizance of provisions figures of census could not be taken. It appears that this statement refers to Provisional Population Totals published on

28.3.2001/10.7.2001 by the Director of Census Operations, Punjab, a copy of which was made available at the time of hearing. It is also stated that the application was barred in view of Article 243-ZG of the Constitution. It is also stated that declaring territorial area in a local body was a legislative act and was not open to judicial review. Reliance is placed on a judgment of the Supreme Court in *State of Punjab v. Tehal Singh* (2002)131 P.L.R. 347 (S.C.). An additional reply was filed disputing the averment that more than 60 percent work of delimitation of wards had already been done. It is stated that the delimitation board was yet to be constituted. The averment that the delimitation work could be completed within 2/3 days is also disputed. It is further stated that the exercise of collection of figures had no legal sanctity in view of definition of population in Section 243-B(g) of the Constitution, read with Section 2(35a) of the Act, Clause 2(f) of Delimitation of Wards of Municipal Corporation Rules, 1995 was in the process of being substituted to be made consistent with Article 243-P(g) of the Constitution. It is also stated that revision of electoral rolls was a different process which had been carried out and was to be completed on April 30, 2002. There was no mandate to undertake the process of the delimitation before every election, while there was binding mandate to hold elections on or before the expiry of five years.

11. Learned counsel for the petitioner contended that once undertaking has been given on behalf of the State of Punjab to undertake delimitation of wards, the State of Punjab could not seek further extension of time or hold elections without carrying out the delimitation. Reliance is placed on judgments of the Supreme Court in *Salkia Businessmen's Association and Others Vs. Howrah, Municipal Corporation and Others*, paras 3 and 8; *Hukamchand Vs. Bansilal and Others*, para 8 and 9 and *Atma Singh and Others Vs. State of Punjab and Others*, para 7.

12. Learned Advocate General for the State of Punjab relied on judgments of the Supreme Court in *State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.*, para 11; *Anugrah Narain Singh and Another Vs. State of U.P. and Others*, para 33; *Pran Nath Bhatia and others Vs. State of Punjab and others*, to submit that delimitation was an issue within the purview of the Government and once an election process was underway, the Court should not stop the election process.

13. We have heard learned counsel for the parties and have perused the case law cited at the bar.

14. The following question arises for consideration;-

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;
3. Whether the State is bound by the undertaking given in its reply to the writ

petition that delimitation was being undertaken and was expected to be completed within four months from the date of filing of the reply (20.11.2001) and whether no further time can be granted to the State for the purpose?

We first take up the question regarding requirement of delimitation.

15. Learned counsel of the petitioner relied on a judgment of the Supreme Court in Atma Singh's case (supra), wherein it was held that the object of delimitation was to ensure fair representation to every citizen and where a municipality is re-constituted by the inclusion of a local area exclusion of a local area, there is necessity of division of reconstituted municipality into new wards. Learned counsel for the petitioner also argued that 60 percent work had already been done and letter dated 14.2.2002, Annexure P-7, from the Directorate Local Government, Punjab to the Commissioner, Municipal Corporation, Amritsar shows that the employees of the department had collected the data population for preparing the area wise lists from which wardwise population was shown in the map of the city and the said map could be used for the purpose of delimitation. Delimitation Board was required to be constituted and the Municipal Corporation, Amritsar was asked to send the names of five elected members of the Municipal Corporation.

16. Learned Advocate General submitted that delimitation was not a must before every election and that the State Government stands by the undertaking to undertake fresh delimitation, but the delimitation had to be left in between on account of requirement of completing elections before 27.5.2002 as per provisions of Article 243-U of the Constitution and though delimitation was mandatory, if the limits of the city, delimitation was not a must in absence of alteration of limits of the city or abnormal variation in population. It was also submitted that the word "population" was defined in Article 243-P(g) and since relevant figures, which have been published at the last preceding census, was to be the basis of the delimitation, delimitation could not be carried out afresh till the figures of the census held in the year 2001 are published.

17. Learned counsel for the petitioner submitted that the word "population" was defined in Rule 2(f) of the Delimitation of Wards of Municipal Corporation Rules, 1995 to mean population as ascertained locally by the staff deputed by the Director and since the figures collected as per the said rules shows increase in population an abnormal variation in population and voting figures at different wards, delimitation was called for. 18. On our asking, learned Advocate General furnished a table showing ward-wise population of figures of the Municipal Corporation, Amritsar as per data recently collected. The said figures are as under;-

Ward No.

Population

1.

13,959

2.

10,136

3.

14,615

4.

12,760

5.

14,286

6.

12,389

7.

11,353

8.

12,110

9.

13,695

10.

13,180

11.

11,171

12.

13,194

13.

13,432

14.

12,301

15.

13,088

16.

10,437

17.

34,441

18.

15,497

19.

14,706

20.

16,085

21.

15,422

22.

13,684

23.

16,573

24.

20,201

25.

16,845

26.

14,140

27.

14,710

28.

13,467

29.

14,518

30.

19,929

31.

18,273

32.

16,064

33.

17,071

34.

14,918

35.

22,370

36.

18,531

37.

14,444

38.

12,659

39.

36,698

40.

14,450

41.

13,120

42.

15,130

43.

17,934

44.

13,767

45.

15,349

46.

14,534

47.

16,472

48.

15,678

49.

1 1,494

50.

14,817

51.

18,963

52.

12,138

53.

18,998

54.

16,874

55.

14,580

56.

11,885

57.

15,922

58.

21,069

59.

19,289

60.

14,939

Total

9,40,530

19. We find, that except wards No. 17, 24, 30, 31, 35, 36, 39, 51, 53, 58 and 59 (total 11 wards), figures are in the neighbourhood of 15000, out of which substantially higher figures are in wards No. 17 and 39. 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 and even though it is desirable to have a fresh delimitation, mere absence of delimitation cannot be a ground for the same being done prior to the proposed election. We need not go into the question whether delimitation is required on account of increase in population or whether the delimitation is required as the stand of the State is that they want to undertake delimitation as stated earlier in the reply and extension of time of four months is sought by the State Government. Only question is whether in absence of delimitation, the present election should not be allowed to be held. We have already referred to a decision of the Supreme Court in *Atma Singh's case* (supra), wherein it was held that the object of delimitation was to give fair representation to every citizen in the municipalities. In *R.C. Poudyal and Others Vs. Union of India and others*, , para 71, referring to Article 170 of the Constitution, it was observed;

"This provision incorporates the rule of "fair and effective representation". Though the rule one person one vote is a broad principle of democracy, it is more a declaration of a political ideal than a mandate for enforcement with arithmetical accuracy. These are the usual problems that arise in the delimitation of constituencies. In what is called "First-art the post system of elections", the variations in the size and in the voting populations of different constituencies, detract from a strict achievement of this ideal. The system has the merit of preponderance of decisiveness over "representativeness".

20. The judgment of the Supreme Court in *Atma Singh's case* (supra) was in respect of a municipality which was re-constituted which is not the case here. As held in *R.C. Poudyal's case* (supra), "one person one vote" was more a political ideal than a mandate. Variation in size of constituencies cannot be totally done away with. It is well known that even though, there is requirement under the Constitution (Article 82 for the Lok Sabha and Article 170 for the Assemblies), as there is requirement u/s 8 of the Act to have wards with equal population as far as practicable, variation in population figures of wards, Lok Sabha and Vidhan Sabha seats does exist. 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 limitation be carried out as early as possible, particularly in view of undertaking already given.

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 Singh's 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 Singh's case (supra). For all other purposes, definition of population as given in Article 243-P(g) of the Constitution will prevail. Even if, the definition mentioned in Article 243-P(g) is accepted, there is no bar to act on relevant figures ascertained at a census and published. We see no difficulty in accepting the relevant figures as published in a provisional publication. Even if, there is some change for any reason in subsequent final publication, the same can be taken care of u/s 9 of the Act.

23. Coming to the last question, we are of the view that even though the State Government is bound by its undertaking and was required to complete the delimitation on or before 20.3.2002, we are of the view that further time can be granted to the State Government as no prejudice is shown by the petitioner as against constitutional mandate of holding election within specified time.

24. Learned counsel for the petitioner referred to judgment in Salkia Businessmen's Association's case (supra), in support of his submission that the Court ought to enforce the undertaking of the State Government. In the said judgment, the parties had settled the matter and the High Court in a writ petition refused to enforce the settlement on the ground that enforcement of the settlement was in the nature of enforcement of a contract, in which writ jurisdiction could not be invoked. There is no dispute with the legal proposition laid down in the said judgment that the Courts have to honour and implement their own orders, and could not permit the authorities to invent methods of their own to short circuit and give a go-bye to the obligations and liabilities incurred by them under orders of the Court. In the present case, we are only concerned with the question whether it was possible to compel the Government to carry out delimitation before the proposed date election. Since we are of the opinion that forcing the State to carry out delimitation before the election might be at the cost of violating constitutional mandate for holding elections before expiry of the term of the present Municipal Corporation, we do not consider it necessary to force the State to adhere to the period mentioned in the reply.

25. Learned counsel for the petitioner also relied on a decision of the Supreme Court in Hukamchand's case (supra), wherein Court confirmed the sale rejecting prayer for extension of time, which had been fixed for the judgment debtor to pay the amount. The principle which will apply to the case involving enforcement of a settlement in a private matter will be different than the principle which will apply to enforcement of an undertaking, which concerns not only a private party, who may be before the Court, but also the public at large.

26. For the above reasons, C.M. Nos.10151-52 of 2002 are dismissed and C.M. No. 11593 of 2002 for grant of further period of four months from the date of publication of final figures is partly allowed. Delimitation may now be carried out within four months from today.