
(2015) 06 BOM CK 0100

In the Bombay High Court

Case No : Writ Petition No. 2906 and 2907 of 2015

Manoj and Others

APPELLANT

Vs

State Election Commission of Maharashtra and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Citation : (2015) 06 BOM CK 0100

Hon'ble Judges : B.R. Gavai, J;I.K. Jain, J

Bench : Division Bench

Advocate : K.S. Motwani, for the Appellant; J.B. Kasat, Advocates for the Respondent

Judgement

B.R. Gavai, J.—Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. The petitions challenge the order passed by the respondent No. 2-Divisional Commissioner thereby directing the village Ghodezari to be deleted from Palandur Zilla Parishad constituency and added to Murmadi/Tup Zilla Parishad constituency. The village Ghodezari for last several years is a part of Palandur Zilla Parishad constituency. It further appears that in the draft constituencies which was published by the Collector, Bhandara, the village Ghodezari was shown in Palandur constituency itself. However, it appears that an objection was raised before the Collector that village Ghodezari should be deleted from Palandur constituency and included in Murmadi/Tup constituency. The respondent No. 2 after hearing the objector, the Collector Bhandara and the Tahsildar, upheld the objection and directed village Ghodezari to be deleted from Palandur constituency and included in Murmadi/Tup constituency. While doing so, the respondent No. 2 Divisional Commissioner also directed village Nimgaon to be deleted from Murmadi/Tup constituency and included in Palandur constituency.

3. The petitioners who are the residents of the said village have approached this Court being aggrieved by the said decision of the Divisional Commissioner. It is

submitted by the learned counsel appearing on behalf of the petitioners that the order passed by the Divisional Commissioner has been passed on totally erroneous reasons. He submitted that the order refers to the resolution of the Ghodezari Gram Panchayat and states that the majority of the villagers are in favour of the inclusion in Murmadi/Tup constituency. The learned counsel submits that on the contrary the Gram Sabha has itself passed a resolution that they shall be continued in Palandur constituency and should not be included in Murmadi/Tup constituency. He submits that village Ghodezari is at a short distance from Palandur and the villagers of Ghodezari use the Government/Semi Government facilities, market facilities, school, college, bank facilities etc. at Palandur and as such had requested village Ghodezari to be continued in the constituency of Palandur. He further submits that the Divisional Commissioner has failed to take into consideration this aspect of the matter.

4. The learned Government Pleader and the learned counsel appearing for the State Election Commission on the contrary submitted that the Divisional Commissioner after considering all the relevant matters has passed the order and as such the interference is not warranted in the extra ordinary jurisdiction.

5. Since there is a reference in the impugned order that the village Ghodezari is situated at a distance of 8 kms. from Palandur and the distance between Ghodezari to Murmadi is around 4 kms., we had called for the map. Upon perusal of the map, we prima facie found that the said observation does not appear to be correct and as such requested the learned Government Pleader to take instructions by around 4 p.m. On instructions, the learned Government Pleader fairly submits that the distance between Ghodezari and Palandur is less as compared to Ghodezari to Murmadi. She, however, submits that the distance is not the only relevant criteria.

6. We have personally verified the map. The perusal of the map would reveal that the village Ghodezari is much nearer to Palandur. It is further to be seen that Ghodezari is contiguous to Palandur and also village Nimgaon is more nearer to Murmadi and contiguous to Murmadi. It is further to be seen that if Ghodezari is included in Murmadi, the area of Nimgaon which is between Ghodezari and Murmadi would be included in the constituency of Palandur. It could thus be seen that even geographically reconstitution is not of contiguous areas.

7. We are aware of our limitation. We cannot sit in an appeal over the decisions of the authorities. We have given the above elaboration only in order to bring on record the factual position, inasmuch as the impugned order is liable to be quashed and set aside on the other grounds. The perusal of the impugned order would reveal that the Divisional Commissioner has taken into consideration that the distance between Ghodezari and Palandur is 8 kms whereas the distance between Ghodezari and Murmadi is 4 kms. The said observation is totally incorrect. The distance between Ghodezari and Palandur is much less than the distance between Ghodezari and Murmadi. Apart from that the distance between Nimgaon and Murmadi is much less than the distance between Nimgaon and

Palandur. We, therefore, find that for village Ghodezari, it is more convenient that they are attached to Palandur and for Nimgaon it is more convenient that they are attached to Murmadi. Apart from that the Divisional Commissioner has referred to the resolution of the Gram Sabha. He has further stated that the majority of the villagers in the Ghodezari constituency desire that they should be included in the Murmadi constituency, whereas the perusal of the resolution of the Gram Sabha would reveal that the entire villagers except the two villagers, are supporting their continuation in Palandur constituency.

8. We, therefore, find that the impugned order is based on considerations which are not in existence. The impugned order would, therefore, suffer from the vice of the irrationality. One of the grounds laid by the Apex Court in the case of *Tata Cellular Vs. Union of India*, AIR 1996 SC 11 : AIR 1994 SC 11 : (1994) 4 JT 532 : (1994) 6 SCC 651 : (1994) 2 SCR 122 Supp for interfering in the decision making process of authority is irrationality. Since we find that the authority has taken into consideration the factors which are not relevant and which are not in existence, the impugned order would suffer by the vice of irrationality.

9. The impugned order is, therefore, quashed and set aside. We make it clear that the respondents-authorities would be entitled to hold the election on the position as it existed prior to the impugned order is passed.

10. Rule is made absolute in the aforesaid terms. No costs.