
(2011) 12 SHI CK 0306
In the High Court Of Himachal Pradesh
Case No : CWP No. 432 of 2007-B

Mehar Singh Chauhan and others

APPELLANT

Vs

State of H.P. and others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Constitution of India, 1950 — Article 327, 328, 329
Delimitation Act, 2002 — Section 10, 10(1), 10(2), 9(2)

Citation : (2011) 12 SHI CK 0306

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Sharma, J.—The exercise connected with delimitation of assembly constituencies in the State of Himachal Pradesh was carried out by respondent No. 2-Delimitation Commission, based on 2001 census, pursuant to Notification dated 27th March, 2006, Annexure P-5.

2. The grievance raised by the petitioners relates to delimitation of Assembly Constituency, Theog, District Shimla. According to the petitioners, the erstwhile Assembly Constituency, Theog, has been reconstituted in such a fashion that substantial parts thereof have been merged with adjoining Constituencies of Chopal and Kasumpti in District Shimla and to make good the shortfall, a sizeable portion of erstwhile Kumarsain Assembly Constituency has been merged with the newly carved out Assembly Constituency, Theog.

3. To elaborate, the petitioners are concerned about exclusion of Kanungo Circle Deha of Tehsil Theog from Theog Assembly Constituency and inclusion thereof in Chopal Assembly Constituency and exclusion of Patwar Circles Dharech, Cheog and Fagu of Kanungo Circle Dhamanderi of Tehsil Theog from Theog Assembly Constituency and inclusion thereof in Kasumpti Assembly Constituency. According to the petitioners, the entire exercise, as above, has been carried out by the Delimitation Commission at the behest of respondent No. 4, who submitted the

proposal to this effect vide letter, Annexure P-11, somewhere in the year 2005.

4. To meet the above objections, respondent No. 2-Delimitation Commission has setup the following averments vide paras 8 to 10 of the preliminary submissions:

8. That the petitioner has contended that extent of 61-Theog Assembly Constituency should have entire Theog Tehsil as per the existing 7-Theog Assembly Constituency and some areas of 62-Kasumpti Assembly Constituency may be added in 61-Theog Assembly Constituency for adjusting its lesser population. This contention has no merit.

9. That the suggestions/objections of the petitioners with regard to the draft delimitation proposal of the Commission published in newspapers on 27.03.2006 were received in the Commission. This was included in the consolidated list of gist of suggestions which were to be discussed in the public sittings. Public sitting in respect of the Shimla district was held at Shimla on 25.04.2006. The Commission has maintained complete video/audio of the complete public sitting proceedings (including the appearance of the petitioner) and can be produced in the court. It may be added that before concluding the public sittings, the Commission gave specific opportunity to everyone present to have his say even if he had not made any written suggestion/objection earlier in respect to the Commission's public notice dated 31.03.2006.

10. All the proposals/suggestions/objections received during and after the public sittings were discussed in detail with the Associate Members and also in the various meetings of the Commission taking into account the relevant considerations mentioned in Section 9, like geographical/physical compactness and the provisions of the Delimitation Act, 2002. After considering all suggestions/representations and the views expressed at the public sittings, the Commission, inter alia, decided to accede to some portion of the suggestions by the petitioner and Mandu, Ballag and Nahol PCs of Dhamanderi KC of Theog Tehsil were excluded from 60-Chopal AC and were included in 61-Theog AC. The Commission published the final order in the Central and State Gazettes on 10.01.2007 and also in newspapers.

5. It shall be pertinent to notice at this stage that petitioners No. 1 and 2 herein, Shri Mehar Singh Chauhan and Shri Daulat Ram Verma alongwith one Lt. Col. (Retd.) Daulat Singh, had earlier filed a Writ Petition, being CWP No. 538 of 2006, Lt. Col. (Retd.) Daulat Singh & others vs. Delimitation Commission and others, which was dismissed in limine by a Division Bench of this Court vide order dated 10.07.2006, text whereof is as under:

In accordance with sub Section (2) of Section 9 of the Delimitation Act, 2002, vide Notification No. 282/ HP/2006 dated 27th March, 2006 the Delimitation Commission published its proposals for the delimitation of Parliamentary and Assembly constituencies for the State of Himachal Pradesh, together with the dissenting proposals of the Associate Members and specified 10th April, 2006 as the date on or after which the proposals would be further considered by it. The

Notification also stated that objections or suggestions with regard to the aforesaid proposals should reach the Secretary of the Commission before the aforesaid date. The aforesaid Notification is in compliance to the aforesaid sub Section (2) of Section 9 (supra). It is the contention of Mr. Sharma, learned Senior Counsel appearing for the petitioners, that the petitioners indeed submitted their objections/suggestions to the aforesaid proposals insofar as these related to Theog constituency and that indeed a public hearing was held on 25th April, 2006 in which the petitioners also were heard albeit for only a few minutes.

After hearing the detailed arguments of Mr. Sharma, we feel that no interference of this Court is warranted because the Commission has acted so far in accordance with the provisions of sub Section (2) of Section 9 (supra) and undoubtedly in accordance with Section 10 of the Delimitation Act, 2002, further action shall follow.

Petition is dismissed in limine.

6. Being aggrieved, the petitioners in the aforesaid CWP No. 538 of 2006 carried the matter to the Hon"ble Supreme Court in a petition for Special Leave to Appeal (Civil) No. 16112 of 2006, Mehar Singh Chauhan & others vs. Delimitation Commission & others, which was dismissed as withdrawn vide order dated 09.10.2006, which reads as under:

Learned senior counsel for the petitioner seeks permission to withdraw the special leave petition. Permission sought for is granted. Accordingly, the SLP is dismissed as withdrawn. However, petitioner would be at liberty to raise all the contentions when the final order is passed.

7. The requisite Notification under sub-section (1) of Section 10 of the Delimitation Act, 2002 (in short "the Delimitation Act"), was thereafter issued by respondent No. 2 on 10th January, 2007, and is Annexure P-16, which is under challenge in the present writ petition.

8. According to the petitioners, the Hon"ble Apex Court had reserved liberty in their favour to raise all the contentions available to them in the aforesaid CWP No. 538 of 2006 before the Delimitation Commission at the time of passing of the final order, Annexure P-16. According to them, such contentions were duly pressed into service, but have not been taken into consideration by the Delimitation Commission. In this regard reliance has been placed on Kunhayammed and Others Vs. State of Kerala and Another, (paras 27, 40 and 44). To this extent there can be no dispute with regard to the legal position enunciated in the judgment, relied upon and rightly so, the opposite sides have also not led any challenge in this regard as even as per the petitioners they had raised all the available contentions to them before the Delimitation Commission before issuance of the impugned Notification dated 10th January, 2007, Annexure P-16, albeit the allegation that the same were not looked into by the Commission.

9. Respondent No. 2-Delimitation Commission has raised preliminary objections regarding maintainability of the writ petition in view of the peremptory bar under Article 329(a) of the Constitution and sub-section (2) of Section 10 of the Delimitation Act. It shall be of help to notice these provisions of law alongwith sub-section (1) of Section 10 of the Delimitation Act, which are extracted below:

Article 329. (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 327 or article 328, shall not be called in question in any court.

Section 10(1). The Commission shall cause each of its orders made u/s 8 or section 9 to be published in the Gazette of India and in the Official Gazettes of the States concerned and simultaneously cause such orders to be published at least in two vernacular newspapers and publicise on radio, television and other possible media available to the public and after such publication in the Official Gazettes of the States concerned, every District Election Officer shall cause to be affixed, the Gazette version of such orders relating to the area under his jurisdiction, on a conspicuous part of his office for public notice.

Section 10(2). Upon publication in the Gazette of India, every such order shall have the force of law and shall not be called in question in any court.

10. In support of the above preliminary objections, reliance has been placed on behalf of respondent No. 2-Delimitation Commission on a recent authoritative pronouncement of law on the subject in Association of Resident of Mhow (ROM) and Another Vs. The Delimitation Commission of India and Others, (particularly paras 30 onwards of the judgment). The petitioners are also relying upon this judgment, particularly paras 11, 26 and 29, to contend that violation of the mandatory provisions of Section 9(2) of the Delimitation Act can very well be gone into by the courts, which can also look into the source of the proposals on the basis of which the exercise with regard to delimitation of a particular constituency has been carried out, albeit the bar enacted under Article 329 of the Constitution and sub-section (2) of Section 10 of the Delimitation act.

11. In re Association of Residents of Mhow (Rom) and another vs. Delimitation Commission of India and others, the Hon''ble Apex Court has laid down in no uncertain terms as under vide para 38:

38. In the present case, the Commission finally determined the delimitation of parliamentary constituencies in the State of Madhya Pradesh after considering all the objections and suggestions received by it before the specified date and got published its orders in the Gazette of India and in the Official Gazette of the State as is required u/s 10(1) of the Act. The orders so published puts them "in the same street as a law made by Parliament itself". Consequently that notification is to be treated as law and required to be given effect to.

12. To the similar effect is the law laid down by the Hon''ble High Court of Kerala

vide judgment dated 9th September, 2005, in W.A. No. 1495 of 2005, Sunny Joseph vs. The Delimitation Commission of India and others and the Hon''ble High Court of Chhattisgarh vide order dated 30th August, 2006, in Writ Petition No. 2135 of 2006, Ganesh Dutt Mersha vs. Union of India and others.

13. In view of the above settled legal position laid down by the Hon''ble Apex Court in Association of Residents of Mhow (Rom) and another vs. Delimitation Commission of India and others (supra), once the exercise with regard to delimitation of assembly constituencies is over with issuance and publication of the requisite notification u/s 10(1) of the Delimitation Act which has the force of law, I have no doubt in my mind that the courts, including this court, are precluded from entertaining and deciding any challenge of the nature raised by the petitioners in the present writ petition in view of the express bar enacted by the legislature in the nature of Article 329(a) of the Constitution and sub-section (2) of Section 10 of the Delimitation Act. Accordingly, the petition is dismissed with no orders as to costs.