

(1994) 10 MP CK 0011
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1297 of 1994

Prahlad Das and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-10-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 243ZA, 324, 329
Delimitation Commission Act, 1962 — Section 8
Madhya Pradesh Municipalities (Extent of Wards) Rules, 1994 — Rule 3(2), 8
Madhya Pradesh Municipalities Act, 1961 — Section 29, 3(35)
Madhya Pradesh Nagar Palika Nirwahan Niyam, 1994 — Rule 9
Representation of the People Act, 1951 — Section 146, 25, 80

Citation : AIR 1995 MP 188

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.S. Doabia, J.—"We must, as a united people keep ablaze in this continent the flames of human liberty, reason, democracy and fair play as living things to be preserved for the better world that is to come". This was what President Roosevelt of America said in his new year message in 1940. Indeed fair play and reason are the twin ideals which must be preserved for a better future of this Great Nation which is surging forward to enter 21st Century on the basis of an electoral system which is the largest and has no parallel on this planet.

2. The concept of democracy as visualised by the Constitution presupposes the representation of people in Governmental functions through the medium of elected representatives. The constitutional machinery which was visualised by the founding fathers restricted this machinery to the Parliament and State Legislatures. By Constitution seventy-third and seventy-fourth Amendment Acts of 1992 similar superstructure has been provided to conduct elections to Municipalities and Panchayats. This machinery visualises the existence of an executive charged with a duty to carry out all matters provided under the law

relating to or in connection with elections. This has been placed under the supervision and control of the State Election Commission. Part IX of the Constitution deals with elections to Panchayat and Part IXA deals with Municipalities. However Part IX is relevant for the elections to Municipalities as well as Article 243K occurring in Part IX dealing with anchayats which provides for State Election Commission. It is the powers of Commission with regard to:

- (i) preparation of Electoral Rolls or Voters Lists and
- (ii) delimitation of Wards, or Constituencies which is the subject-matter of these two petitions.

3. These are:

- (1) Prahlad Das v. State of M. P. Writ Petition No. 1297 of 1993 and
- (2) Sardar Gurcharan Singh v. State of M.P., Writ Petition No. 1253 of 1994.

4. In the first petition preferred by Prahlad Das voters list was duly prepared. It attained finality under the M. P. Nagar Palika Nirwahan Niyam, 1994, hereinafter referred to as "1994" Niyamas. The final voters list prepared was found to be defective by the State Election Commission, hereinafter referred to as the "Commission". This list was scrapped. Thereafter a preliminary list was re-published. Objections were invited. In the preliminary list the names of the petitioners were not there. Instead of lodging claim under 1994 Niyamas (Rules), the petitioners filed this petition. The lists have been finalised and in the final list so published the names of the petitioners are not there. This dispute is with regard to Ward No. 12 only of Shivpuri municipality.

5. The chronological events in this regard are as under:

7-9-94 : Claims and objections invited. 8-9-94 : Claim lodged by the petitioner was accepted. 10-9-94 16-9-94 : Appeals preferred against inclusion of the 19-9-94 names of the petitioners. 17-9-94 : Appeals opposed by filing of objections by one D. K. Jain. 21-9-94 : Appeals dismissed as barred by limitation. 7-10-94 : Commission announced programme for holding elections fixing date of nomination as 17-10- 1994. 8-10-94 : Order of Commission cancelling voters list communicated. 10-10-94 : Preliminary voters list re- published, copy is Annexure A/8 with the petition. Objections Were to be filed between 10-10-94 to 17-10-94. 21-10-94 : Present petition filed in this Court. 6. After hearing claims and objections lists were finalised. In the provisional list there were 1222 voters; in the final list there are now 1375 voters: Challenge is made to these on the following grounds.

(i) the State Election Commission was not within its rights to scrap the voters list which was finally published; and

(ii) in any case, if the final list was to be scrapped, then opportunity of hearing was required to be given to the petitioners.

7. The stand of the respondents is that in the matter of preparing the voters lists large scale malpractices were committed. There were complaints and a direction was given by the Commission to prepare fresh voters lists. This was necessary as otherwise it would have imperiled the democratic system sought to be ushered under the constitutional provisions. It is contended that there was no necessity to hear the petitioner as it is not possible to give hearing to all the voters. Those who want to come on the rolls by unfair means cannot seek protection of rules of fair play. In any case it is submitted that the petitioners had acquired knowledge about the preliminary voters list and should have lodged claims of objections. This opportunity to file objections given to the petitioners symbolises due compliance of principles of natural justice. Thus omnipotence of the Commission is the sheet anchor of the claim of the respondents.

8. Bar to the maintainability to the writ petition has been raised by the respondents. Reliance has been placed on Article 243ZG of the Constitution of India in this regard.

9. In the second petition preferred by Sardar Gurcharan Singh, notification Annexure P/1 has been challenged. According to the petitioner, in the matter of constitution of the wards, the Commission and the officer under its control have not taken into consideration the concept of population as visualised under the M.P. Municipalities Act, 1961, hereinafter referred to as the Act. It is also contended that the Rules namely, M.P. Municipalities (Extend of Wards) Rules 1994 have been observed in breach rather than in observing them. The challenge is made on the following grounds :

(i) that, in the matter of dividing the wards the concept of population as contained in Section 3(25)(a) has not been taken note of. The argument is that the population as mentioned in the preceding census should have been taken note of;

(ii) that, while constituting the wards, the population figures have not been taken into consideration. It is pointed out that even though actual population is less but it is reflected more. Reference is being made to Ward No. 19 for this purpose. The declared population for ward No. 19 is 2684 whereas the voters list shows the strength of voters as 2776. According to the learned counsel the number of voters cannot be more than the population,

(iii) that, in 1991 census for wards Nos. 5, 13, 7, 6 and 9, the population has been shown as 12405 whereas while publishing the final tally the population is shown as 12649.

10. It may be seen that ward Nos. 5, 13, 3, 6 and 9 have been re-numbered as 9, 10, 8, 6, 12. According to the petitioner, this figure being more than 5 per cent is contrary to the provisions of Rule 3(2) of M.P. De-limitation of Ward Rules.

11. The petitioner contends that the above factual position stand admitted by the State Government.

12. The stand taken by the respondents is that the total population of the town of Vidisha was taken note of. This figure at 92,920 was taken note of. The population was divided by 36 i.e., the number of wards and the wards were constituted accordingly. According to the State, this might have led to some variation.

13. The petitioner further pointed out that some changes have been brought subsequently in population figures. This has not affected the number of wards or constitution thereof. According to the respondents, this has been done after the matter was reconsidered by the Collector, district Vidisha. Fresh notification is dated 6th of October, 1994. The challenge to this notification is that this could not be done unless and until this was preceded by inviting objections. According to the learned counsel appearing for the petitioner, no amendment could be made in the notification once it is published without re-publishing the same and without giving an opportunity to the residents to make objections.

14. In the background of the facts given above, the questions which arise are as under :

(i) Is the bar imposed by Articles 243ZG is a blanket ban and covers even those matters which arise before the issuance of a notification asking the electorate to elect their representatives?

(ii) Can the Commission be clothed with the comprehensive functions under Article 243ZA of the Constitution?

(a) to scrap the voters list which has assumed finality under Rule 9 of the 1994 Niyam?

(b) to issue a notification with regard to delimitation of Wards in supposed utter disregard of population criteria and

(c) Can it again amend it?

(iii) Assuming that the Commission is competent to do the acts enumerated above then can this be done without compliance with the principles of natural justice?

15. Before dealing with these aspects it would be useful to notice the constitutional provisions and also the provisions contained in the Municipal Act and the Rules.

16. Constitutional provisions are: Articles 243K, 243ZA and 243ZG.

243K. Elections of the Panchayats.--

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine :

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commissioner, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the panchayats.

243-ZA, Elections to the Municipalities.--

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.

(2)xxxxx

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 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."

Reference be also made to Article 324 which is in materia to Article 243ZG. This reads as under:

"324. Superintendence, direction and control of elections to be vested in an Election Commission.-- (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the officers of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission)

(2) The Election Commission shall consist of the chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in

that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the function conferred on the Commission by Clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be vested to his disadvantage after his appointment;

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (1)."

17A. Sections 3(25a), 3(35a) and 29 of the M. P. Municipalities Act, 1961 may now be noticed :

"3(25-a) "Population" means the population as ascertained at the last preceding census of which the relevant figures have been published"

"3(35-a) "State Election Commission" means the State Election Commission constituted under Article 243K of the Constitution."

"29. Determination of number and extent of wards and conduct of elections-(1) The State Government shall from time to time by notification in the official gazette, determine the number and extent of wards to be constituted for each Municipality.

Provided that the total number of wards" shall not be more than forty and not less than fifteen.

(2) Only one Councillor shall be elected from each ward.

(3) The formation of the wards shall be made in such a way that the population

of each of the wards shall, so far as practicable be the same throughout the Municipal area and the area included in the ward is compact.

(4) As soon as the formation of wards of a Municipality is completed the same shall be reported by the State Government to the State Election Commission.

(5) The superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the Municipality shall be vested in the State Election Commission.

(6) The State Government shall in consultation with the State Election Commission make rules for the preparation of Electoral rolls and conduct of all elections to the Municipalities."

17. Rules with regard to voters list are known as the Madhya Pradesh Nagarpalika Nirvachan Niyam, 1994. Rules 3 to 9 of the 1994 Niyam are relevant. These are as under :

"3. Preparation of Voters" List and appointment of Registration Officer.-- (1) The Election Commission shall subject to the provisions of the Act cause to be prepared in form 1 a wardwise list of voters in Hindi written in the Pevanagri script for each Municipality.

(2) The Election Commission shall, in consultation with the State Government appoint a Registration Officer for each municipality and one or more Assistant Registration Officer as may be found necessary to assist the Registration Officer in the preparation of the list of voters for the municipality.

(3) Every Assistant Registration Officer shall subject to the control of Registration Officer be competent to perform all or any of the functions of the Registration Officer.

4. Publication of Voters" list for inviting claims and objections.-- (1) As soon as the Voters" list is ready, the Registration Officer shall give a public notice inviting claims for inclusion of names in the list and objections to any entry therein, by displaying a notice in such form as may be prescribed by the Election Commission and making a copy of the list available for inspection --

(a) at his office, if it is within the Municipality;

(b) at the office of the Municipality; and

(c) at such other places in or near the ward as may be specified by him for the purpose.

(2) The notice shall specify the period during which the officer with whom an objection or claim may be lodged and the date, time and place for the hearing of such objections and claims, if any, by the Registration Officer.

(3) The voters" list shall remain open for inspection, free of charge, by the public for a period of at least seven days from the date of publication of the notice,

during office hours.

(4) Copy of the voters' list may be supplied to any person on payment of such fee as may be fixed by the Election Commission by a general or special order.

5. Claims and objections.-- (1) Any person, whose name is not entered in the voters' list or is entered at an incorrect place or with incorrect particulars of any person whose name is entered in the list and who objects to the inclusion of his own name or the name of any other person in that list, may prefer a claim or objection by delivering to the Registration Officer an application in writing duly signed by him not later than 3 O'clock in the afternoon of the last day specified in the notice under Rule 4 and no claim or objection thereafter shall be entertained.

(2) Every claim or objection shall be preferred in such form as may be prescribed by the Election Commission and shall either be presented to the Registration Officer or to such other officer as may be nominated by him in this behalf.

(3) A claim or objection may be accompanied by any documents on which the claimant or objector relies.

6. Disposal of claims and objections.--(1) The Registration Officer shall, after holding such summary inquiry into the claims or objections as he deemed fit, record his decision in writing and shall make available on demand a copy of such decision to the claimant or objector free of charge forthwith.

(2) No person shall be represented by any legal practitioner in any proceeding under this rule.

(3) The Registration Officer shall amend the voters' list in accordance with his decision.

(4) The voters' list so amended shall subject to the decision in appeal, if any, be final and a copy thereof duly authenticated by the Registration Officer shall be kept in his office and another copy deposited in the office of District Election Officer.

5. Any person aggrieved by the decision of the Registration Officer may prefer an appeal to the Appellate Authority within five days of such decision: Every appeal shall be in such form as may be prescribed by the Election Commission and presented to the Appellate Authority along with a copy of the decision of the Registration Officer. The Appellate Authority, after giving the appellant an opportunity of hearing and after making such summary enquiry as it deems fit, shall pass suitable orders expeditiously and in the event of the appeal succeeding, direct the Registration Officer to amend the voters' list to give effect to its decision. The decision of the Appellate Authority shall be final;

Provided that no amendment shall be carried out in the voters list according to the decision of the Appellate Authority after the last date and time fixed for making nomination in the notice issued under Rule 21 and before the completion

of Election.

7. Inspection and issue of certified copies.-- Every member of the public shall have the right to inspect the voters' list referred to in Sub-rule (4) of Rule 6 on payment of a fee of two rupees in cash and certified copies of the same may be issued by the Registration Officer or by an officer authorised by him in this behalf to an applicant on payment of the same fees in cash as are prescribed for copies of revenue records.

8. Duration of voters' list and its revision.-- (1) Voters' list referred to in Sub-rule (4) of the Rule 6 shall continue in force until revised in accordance with Sub-rule (2) of this rule.

9. Finalisation of voters' list.-- No correction in any entry or inclusion or deletion of any name in the voters's list shall be made in the list after its finalisation under Rule 6. Provided that clerical, technical or printing error or omission, apparent on the face of the record, regarding a voter may be corrected by the Registration Officer at any time before the last date and time fixed for making nomination under Rule 21.

18. Rules dealing with Delimitation of wards are contained in Madhya Pradesh Municipalities (Extent of Wards) Rules, 1994. Rules 3 and 8 are relevant and these reads as under :

"3. Decision of Municipal area into wards.-- (1) A municipal area shall be divided into wards in number equal to the number of wards as determined by the State Government under Sub-section (1) of Section 29.

(2) The population of every Municipal area on dividing by the number of wards as determined for that Municipal area, the quotient so arrived shall be the average population of a ward in which a variation of up to 15 percent may be allowed.

(3) The area comprised within every ward shall be competent.

8. Disposal of the objections/suggestion as received and final publication.-- Any citizen may submit his objection or suggestion in regard to the proposed limits of the wards within seven days from the date of the notice published by the nomination officer which shall be sent by such officer to the Collector of the District. The Collector shall forward such objections and suggestions to the State Government after considering the opinion of the Collector the State Government shall take the decision on the objections and suggestions as received and shall publish the notification in regard to the extent of the wards as determined, in the Madhya Pradesh Gazette. Notification published in the Madhya Pradesh Gazette under the rules shall be conclusive for the purpose of Sub-section (1) of Section 29 that to the extent of wards have finally been determined."

19. There is no manner of doubt that the sole remedy for an aggrieved party if he wants to challenge any election in an election petition. The law in this

connection was laid down in the early years of the Republic in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . Indeed, the above decision is a locus classicus on the subject and has been consistently followed in all cases dealing with this aspect.

"Democracy is a concept, a political philosophy, an ideal practised by resolving to governance by representatives of people elected directly or indirectly. But electing representatives to govern is neither a fundamental right nor a common law right but a special right created by Statutes or a political right or privilege and not a natural, absolute or vested right. Concept familiar to common law and equity must remain stranger to election law unless statutorily recognised."

Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, .

20. The question which arises is whether the bar of Article 243ZG which has been compared with the "Great Wall of China" is no impregnable" that it cannot be by-passed even by Article 226 while dealing with this aspect in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, vis-a-vis Article 329 which is in pan materia with Article 243ZG. It was observed :

"We have projected the panorama of administrative law at this length so that the area may not be befogged at the trial before the Election Court and for action in future by the Election Commission. We have held that Article 329(b) is a bar for intermediate legal proceedings calling in question the steps in the election outside the machinery for deciding election disputes. We have further held that Article 226 also suffers such eclipse. Before the notification u/s 14 and beyond the declaration under Rule 64 of Conduct of Election Rules, 1961 are not forbidden grounds. In between is, provided, the step challenged is taken in furtherance of, not to halt or hamper the progress of the election."

21. Thus, the process of framing electoral Rolls is not part of the election progress and as observed in *Indrajit Barua and Others Vs. Election Commission of India and Others*, . It may be possible to challenge the same. The following observations are relevant and be noticed.

"We are not prepared to take the view that preparation of electoral rolls is also a process of election. We find support for our view from the observations of Chandrachud, C.J. in *Lakshmi Charan Sen's case* (AIR 1985 SC 1233) (supra) that "it may be difficult, consistently with that view to hold that preparation and revision of electoral rolls is a part of "election" within the meaning of Article 329(b)". In a suitable case challenge to the electoral roll for not complying with the requirements of the law may be entertained subject to the rule indicated in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, ."

but it was also said that "election of a candidate is not open to challenge on the score of the electoral roll being defective."

22. The above is true about what happens before the "commencement of

election" process which begins when notice of election is issued under Rule 21 of the 1994 Niyam. But what about the delimitation of constituencies and allotment of seats in such constituencies. Once this has been completed it would not be open to challenge. The notification issued under the Act and the Rules shall have force of law. This view was expressed in *Meghraj Kothari Vs. Delimitation Commission and Others*, . The Supreme Court was dealing with Delimitation Commission Act, 1962 and it was observed :

"It will be noted from the above that it was the intention of the legislature that every order under Sections 8 and 9 after publication is to have the force of law and not to be made the subject matter of controversy in any Court."

It was further observed :

"Therefore, although the impugned notification was not a statute passed by Parliament, it was a law relating to the delimitation of constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution."

23. See also *P. Mastanaiah Vs. Delimitation Commissioner, New Delhi and Others*, .

24. Thus bar of Article 243ZA may not stand as a "Great Wall of China" and an order of Commission when this pertains to a process before the commencement of the election be open to challenge but delimitation of constituencies is within the protective umbrella of Article 243ZA(a).

25. The second question that arises for consideration is as to the amplitude of powers and the width of the functions which the Commission may exercise under Article 243ZA of the Constitution.

26. Article 243ZA vests in the Commission the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the Municipalities of the State. This Article is thus couched in wide terms. Power in any democratic set up, as is the pattern of our polity, is to be exercised in accordance with law. Since the conduct of all elections to the various Municipalities is vested in the Commission, the framers of the Constitution took care to leaving scope for exercise of residuary power by the Commission in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time. Every contingency could not be foreseen, or anticipated with precision. That is why there is no hedging in Article 243ZA. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules. That seems to be the reason for having the exercise of powers under Article 243ZA operative and effective when it is reasonably called for in a vacuous area. There is, however, no doubt whatsoever that the Commission will have to conform to the existing laws and rules in exercising its powers and performing its manifold duties for the conduct of free and fair elections. The Commission is a high-powered and independent

body. The Commissioner must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the election process is completed properly, in a free and fair manner. This is because an express statutory power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power or the performance of the duty.

27. The Commission has thus to pass appropriate orders on receipt of reports from the officer with regard to any situation arising in the course of an election or before and power cannot be denied to him to pass appropriate orders. Moreover, the power may have to be exercised with promptitude. Whether an order passed is wrong, arbitrary or is otherwise invalid, relates to the mode of exercising the power and does not touch upon the existence of the power in him if it is there either under the Act or the rules made in that behalf, or under Article 243ZA.

28. Thus, the Commission would have the power to scrap a voters list and order preparation of fresh one.

29. The Commission has all the power to issue notification to constitute wards and if need be to re-adjust them.

30. As a matter of fact decision of the Supreme Court of India under Article 324 of the Constitution supports the above conclusions.

31. Thus in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, the power of the Commission to order re-poll was upheld.

32. Reference to the three conclusions arrived at in *Mohinder Singh Gill*'s case (*supra*) would be made in the later portion of this order. But before doing so the question as to whether the Commission was bound to hear the petitioner or all those persons whose names were included in the final voters list and who were likely to be affected by the republication be considered. The question as to whether hearing was necessary when some changes were made in population figures be also noticed.

33. Another question which arises is as to whether when a voters list is re-published with a view to invite claim and objections would that be good enough to infer that the requirements of natural justice are fully met.

34. The aim of the rules of natural justice or to put it negatively is to prevent miscarriage of justice. *Tucker L.J. in Russel v. Duke of Norfolk 1949(1) All ER 109* emphasised that whatever standard of natural justice is adopted one essential is that the person concerned should have a reasonable opportunity of presenting his case. It was observed:

"There are no words which are of universal application to every kind of

inquiry..... The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject-matter that is being dealt with, and so forth."

35. The concept of flexibility of fair play was highlighted in the following words in *Wiseman v. Borneman* (1971) AC 297 by Lord Reid when he said he would be "sorry to see this fundamental general principle degenerate into a series of hard-and-fast rules."

36. Lord Denning, in *Salvarajan* (1976) 1 All ER 1 said :

"The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress or, in some such way adversely affected by the investigation and report, when he should be told the case made against him and be afforded a fair opportunity of answering it. The investigation body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers: It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only. Moreover it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decision and make its own report."

37. There may again be cases where on account of peculiar facts hearing may not be practical and it is in these cases there has to be balance between the need for expedition and the need, to give full opportunity. This is how the matter was dealt with in *Mohinder Singh Gill's* case (supra).

"After all, it is not obligatory that counsel should be allowed to appear nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for. Disclosure of the prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases, be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call may in many cases, be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call may suffice. If all that is not possible as in the case of a fleeing person whose passport has to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible."

38. In *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, , *Hidayatullah, C.J.*, speaking for the Court negated the plea of natural justice when the whole examination was cancelled on account of mass copy and it was held that "the mention of fairplay does not come well from the

respondents who were grossly guilty of breach of fairplay themselves at the examinations." It was further observed :

"This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging anyone individually with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidate if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means.

The examination as a whole had to go."

Dealing with this concept in Mohindar Singh's case (supra); it was observed :

"Fair hearing is thus a postulate of decision making cancelling a poll, although fair abridgement of that process is permissible. It can be fair without the rules of evidence or forms of trial. It cannot be fair if apprising the affected and appraising the representations is absent. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law."

39. As a matter of fact in the present case the Commission took the steps with a view to maintain purity of election process as proper electoral roll is the essence of elections.

40. It would be again relevant to refer to the three conclusions arrived at in Mohinder Singh's case (supra).

"Diffusion, even more elaborate discussion, trade to blur the precision of the conclusion in a judgment and so it is to meet that we synopsise the formulations. Of course the condensed statement we make is for convenience, not for exclusion of the relevance or attention of the binding inspect of the detailed argumentation. For this limited purpose, we set down our holdings.

I(a) Article 326(b) is a blanket ban on litigative challenges to elctroral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.

2(a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the

conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection, with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such norms can reasonably and realistically be required of it as fairplay-in-action is a most important area of the constitutional order, viz., elections. Fairness does import an obligation to see that no wrong-doer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full penoply but in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication.

3. The conspectus of provisions bearing on the subject of elections clearly express the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post election stage, and procedure as predicated in Article 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to relief to an injured candidate if he makes out a case and such processual emplitude of power extends to directions to the Election Commission, or other appropriate agency to hold a poll, necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law."

41. Thus, I am of view that hearing is required to be given by the Commission when the right of an Individual is likely to be interfered with but to a situation like the present one it was not necessary to do so. This is because petitioners were made aware of the proposed change. This was a notice to them, They could have filed their claims and objections. They could have preferred an appeal in the event of the decision going against him. They could also seek supervisory writ jurisdiction of this Court. The petitioner chose not to avail of this and have landed themselves in a situation for which they are to blame none but themselves.

42. So far notifications with regard to delimitation of constituencies is concerned, the respondents divided the total population by 36 i.e., number of wards keeping geographical and other factors wards have been constituted. It is not possible to expect mathematical exactitude in this regard. No fault thus can be found with the course so adopted by the respondents. This is a legislative Act. What was said by a Division Bench in *Rajdhar Singh v. State of M.P.*, (1994) 1 MPJR 246 while upholding the Constitution of a unit under the Panchayat Law would apply

to this case also. Another Division Bench of this Court also is to the same effect. This is *Mukand Das v. State of M.P.* 1991 J.L.J. 715 . Both Division Benches in turn took sustenance from the law laid down by the Supreme Court (reported twice in the All India Reporter i.e.), *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, and *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, . This, there is no merit in these petitions. A Full Bench of Punjab High Court in *Dev Prakash Balmukand Vs. Babu Ram Rewti Mal and Others*, , said :--

"An election is in its nature an expensive and time-consuming process, and, if it is to be disturbed after the whole process has been gone through, there must be shown to have existed some material circumstance touching the substance of the election and not merely a technical breach of a technical rule."

The above observations apply to these cases also. Thus, the conclusions are :---

(i) Commission is supposed to comply with rules of natural justice. See *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

(ii) The concept of natural justice would vary from case to case.

(iii) There was compliance of these principles as the petitioners were given a chance to file objections to the voters list.

(iv) Bar created by Article 243ZG would not be there when challenge is made to a process which does not deal with process of elections beginning with issuance of notification calling upon the constituency to elect and declaration of result.

(v) Notification regarding delimitation of constituency is beyond challenge.

43. These petitions are without merits and are dismissed with no order as to costs