

(2014) 10 MP CK 0034

In the Madhya Pradesh High Court

Case No : W. P. Nos. 3656/2014 and 3999/2014

Rajesh Babu

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipal Corporation Act, 1956 — Section 10, 11, 195(4), 405, 405(3)
Madhya Pradesh Municipalities Act, 1961 — Section 5A, 5A(2)

Citation : (2014) 3 JLJ 398

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : V.K. Bhardwaj, Sr. Advocate, Ravindra Dixit and Anvsh Jain, Advocate for the Appellant; R.P. Rathi, GA, Advocate for the Respondent

Judgement

Rohit Arya, J.—This order shall govern disposal of W.P. No. 3656/2014 and 3999/2014 as both these petitions are common in nature filed for the same cause of action.

2. This petition under Article 226 of the Constitution of India styled as Public Interest Litigation is presented before this Court seeking indulgence in the matter of delimitation and formation of wards of the Municipal Corporation Gwalior alleging non-adherence/infracton of the provision contained under Section 10 and 11 of the Municipal Corporation Act as well as Rules 3,6 and 8 of the M.P. Municipal Corporation (Extent of Wards) Rules, 1994 (For short ?the Rules?).

3. Before advertng to submissions advanced by learned counsel for the petitioner in the context of aforesaid provisions of the Act and Rules, it is apposite to refer the relevant facts.

4. The Governor of Madhya Pradesh in exercise of powers under Section 405(3) of the Municipal Corporation Act, 1956 (for short ?the Act?) issue notification dated 6/11/2012 to include the areas as mentioned in column No. 3 of Schedule

I in the existing limits of Municipal Corporation, Gwalior with revised boundaries as mentioned in Schedule II as final publication from the date of notification published in M.P. Gazette. The notification so published is on record as Annexure P/1. A perusal whereof reveals that 76 villages were included in the limit of Municipal Corporation, Gwalior, as a consequence whereof, determination of number and extension of new wards was required to be done in accordance with the procedure prescribed under the Act and Rules made thereunder. Prior to inclusion of aforesaid villages within the territorial jurisdiction of Municipal Corporation, Gwalior, the municipal wards were divided into 60 wards vide notification dated 27th July, 2009 under Section 10 of the Act. Before issuance of this notification, detailed procedure adhering to Section 10 read with Rules 6 to 8 of Rules were followed and same was reported by the State Government to State Election Commission and thereafter revised voter list was published and elections were held. There appears to be no challenge to delimitation of wards during this period.

5. After issuance of the aforesaid notification dated 6/11/2012, for determination of the wards and their boundaries, the Collector, Gwalior vide letter dated 11/2/2013 called upon the Commissioner, Municipal Corporation, Gwalior to send information as contemplated in sub-rule (2) of Rule 6 of the Rules and in response thereto the information so sought was supplied by Municipal Commissioner, Gwalior vide its letter dated 10-13/12/2013 and the same is on record as Annexure P/2 of the writ petition.

6. The requisite information was supplied as to the following effect:-

(i) the notification dated 6/11/2012 was issued by the Governor in exercise of power under Section 405(3) of the Act;

(ii) the population of the 60 wards of the Municipal Corporation, Gwalior as per the census 2011; 10,54,420;

(iii) the population of 76 villages added to the territory of Municipal Corporation, Gwalior is 1,04,612 as per 2011 census, as such total population of the revised area of Municipal Corporation, Gwalior came to 11,59,032 (10,54,420 + 1,04,612);

(iv) average population of each ward was worked out dividing total population of 11,59,032 by total number of wards 66, which came to 17561 with the variation of 15% (2634), thus figure was reached at minimum 14927 and maximum 20195.

7. Alongwith this information, the details of number of villages, total population as per 2011 census, ST population, SC population was also provided in tabular form in respect of each newly proposed wards which follows as under:-

This information so supplied was in strict compliance of provisions as contained in Rule 6 (2) of the Rules. Upon receipt of the information, the Collector ordered for publication of the aforesaid detailed information in newspaper inviting

objections thereupon in prescribed form as contemplated under Rule 7 of the Rules. Accordingly, notice in that behalf was so published and on record as Annexure P/4. For the purposes of inviting objections, hearing period from 4/1/2014 to 13/1/2014 was scheduled. After completion of hearing, the Collector vide order dated 15/1/2014 constituted a committee to consider and decide the objections and suggestions received in respect of those newly added wards with prior approval of the Commissioner vide its order dated 3/1/2014. The Committee was required to schedule its meeting on 16/1/2014 and submit the proposal by 20/1/2014. Aforesaid document is on record as Annexure P/5. Upon submission of the proposal on 20/1/2014, same was forwarded to the Commissioner, Gwalior Division, Gwalior on 21/1/2014. The Commissioner approved the proposal of addition of wards No. 61 to 66 to existing 60 wards of the Corporation in exercise of the powers under Section 10 of the Act vide its communication dated 25/1/2014 and same was directed to be notified in official gazette. It is relevant to mention here that Commissioner exercised powers by virtue of delegation of power under Section 426B of the Act vide the notification published in the official gazette dated 24/2/2004 and the same is on record as Annexure P/8. Thereafter, upon publication, the Municipal Corporation, Gwalior now has 66 wards within its revised territory.

8. Thereafter, the Collector in accordance with Section 11 of the Act read with M.P. Municipality (Reservation of Wards for SC, ST, OBC and Women) Rules, 1994 (For short ?Rules of 1994?) prepared the list of revised wards on 19/6/2014 and then the State Government has issued paper publication inviting objections I the matter of reservation of seats vide notices dated 7/6/2014 in Hindi Daily Dainik Bhaskar and on 14/7/2014 in Hindi Daily Nai Dunia and the public hearing was conducted on 19/6/2014 at the place specified i.e. Late Shri Dharmarao Memorial Auditorium at 11 am. After due deliberations, it was decided that consequent upon extension of wards in the revised territory limits of Municipal Corporation, Gwalior, the total number of wards increased from 60 to 66. The total population of these 66 wards is 11,59,032, out of which population of SC is 200965 and therefore, the ratio of population of SC is worked out at 11.44 % and therefore, proportionately 11 wards were held to be reserved for SC and details of such 11 wards in descending orders were notified. Thereafter, similar exercised was carried out to work out the number of wards to be reserved for ST as against the total population of 11,59,032, the population of ST is 16371, 1.41 % of total 66 wards was 0.93 and therefore, one ward was reserved for ST, likewise for OBS , 25% wards out of 66 wards i.e. 17 wards were reserved and accordingly 50% of wards out of SC, OBC and remaining wards were reserved for women. Details of proceedings are also on record as Annexure P/11. Thereafter, a preliminary voter list was published on 29/7/2014 and objections were called up to 15/8/2014. It appears that final voter list has also been prepared.

9. Certain variance of population in some of wards is stated in the earlier affidavit to be due to geographical situation as some of the villages are scattered and some are compact. It is submitted that aforesaid extensive exercise in the

matter of extension of wards and prescription of reservation to various categories was in strict compliance of the Act and Rules made thereunder. Neither there was any ill-will or favouritism, malice or discrimination of the boundaries in the aforesaid exercise.

10. The counsel for the petitioner submits that upon extension of boundaries by adding the number of villages in the revised territory of the Municipal Corporation, Gwalior, the respondents were required to undertake exercise of delimitation of all the wards providing revised boundaries. Since, the same has not been done, the extension of wards is contrary to the provisions of Section 10 read with Rule 3 (2) of Rules read with Rule 6 of Rules of 1994. On perusal of Section 10 of Act, this Court is of the opinion that for extension of territorial limits of Municipal Corporation, Gwalior, the Governor has notified the same in exercise of power under Section 405 of the Act vide Annexure P/1 dated 6/11/2012. The competent authority has worked out the average population of each ward to the tune of 17,561 with the variation of 15% (2634), thus figure was reached at minimum 14927 and maximum 20195. 60 wards were already notified upon fixation of territorial limits vide notification dated 27th July, 2009. Until filing of this petition in the year 2014, there was no challenge to aforesaid notification based whereupon elections were also held in the past. The average population of newly constituted 6 wards is within the range of average population with variance to the extent of 15%. There is no requirement under the law that upon extension of wards, the territorial limit of each ward has to be exercised. Instead the Rule 6 (2) (iv) contemplate that information is required to be supplied related to population of each proposed wards and figures of SC and ST, OBC. Respondents have carried out the exercised as regard population of newly constituted wards No. 61 to 66 as stated above and same are found to be in conformity with the Act and Rules framed thereunder. In absence of any such requirement of delimitation of revision of all wards of Municipal Corporation and for fresh division of wards, contention of petitioner in that behalf is of no substance and accordingly is rejected.

11. It may be true that in some of the wards, the ratio of population is not maintained as contemplated in the Act but that is with reference to delimitation of 60 wards notified on 27th July, 2009 and revised voters lists were published. There has been no compliant by any section/class of voters otherwise eligible but were denied right to vote. It may be remembered that the whole purpose of delimitation of Municipal Corporation, Gwalior into wards is to ensure that every citizen gets a fair representation in the Corporation as there can be no disenfranchisement of a part of the electorate of a Municipal Corporation. The Hon'ble Supreme Court in the case of Atma Singh and Others Vs. State of Punjab and Others, has laid emphasis on this aspect while approving the judgment of the Gujarat High Court reported in Bhaichandbhai Maganlal Shah Vs. State of Gujarat and Others, and the same is profitably quoted below:

?It must follow logically and inevitably from this proposition that the constitution

of wards dividing the whole of the municipal district is a sine qua non of a valid election. If no wards at all are constituted in the municipal district, the machinery of election cannot go through and equally the machinery of election cannot go through if wards are constituted in respect of a part of the municipal district and the other part is not divided into any ward or wards. In such a case there would be lists of voters for the wards which are constituted out of a part of the municipal district but there would be no lists of voters so far as the other part of the municipal district is concerned and no one from that part would be qualified to vote or to stand as a candidate for the election and no councillors being elected by that part, there would be no representation of that part on the municipality. Where such a situation arises, it is difficult to see how the Municipality can be said to be a Municipality for the whole of the municipal district within the meaning of S. 9.

We approve of the view taken by the Gujarat High Court.?

12. The entire extended area of the Municipal Corporation has been divided into wards in accordance with law. There is no challenge to the revised voters list. Therefore, every voter in the voter list within the limits of the Municipal Corporation is free to exercise the right to vote in the elections of wards of the Corporation. No complaint can be made in that behalf. As such, no illegality is found in extension of the newly added 06 wards to the already existing 60 wards of the Municipal Corporation, Gwalior.

13. That apart, upon perusal of exercise having been undertaken by respondents under Section 10 of the Act and rules framed thereunder and notification issued in respect of the reserve wards, same is found well in conformity with Section 11 of the Act and Rule 7 of Rules of 1994. The petitioner has failed to point out any discrepancy or illegality in the matter of allotment of wards for reserve category. Respondents as a matter of fact have adopted due process of law in formation/extension of 6 wards and for providing reservation in the entire 66 wards of Municipal Corporation, Gwalior. Learned counsel for the petitioner at later stage has brought to the notice of this Court a judgment of Division Bench at Principal Seat, Jabalpur in the matter of Abhinesh Mahore and others Vs. State of M.P. & Ors. (W.P. No. 12777/2014 decided on 14/10/2014) to submit that the objections to the extension of wards having not been decided by the State Government as provided for under Rule 8 of Rules, instead the Commissioner, Gwalior Division, Gwalior, the entire exercise in that behalf was vitiated under the law. Having perused the aforesaid order this Court is of the opinion that facts in hand are totally different from that case. The aforesaid judgment is with reference to different set of Act and Rules as in that case the matter was with regard to revision of limits of municipality. The objections are required to be decided by Governor as provided for under Section 5-A of the M.P. Municipality Act, 1961; whereas, the objections were decided by the Collector, therefore, the objections were found to be not have been decided by the authority competent. Accordingly, the final notification issued for inclusion of villages in the limits of given

Municipality was held to be not sustainable in the eyes of law. Instead, it is directed that objections be placed before the Governor for his consideration as postulated in Section 5A(2) of the M.P. Municipality Act, 1961. Whereas, in the instant case, the provisions of Municipal Corporation Act applies. For the revised territorial limits of Municipal Corporation, Gwalior power has been exercised by the Governor under Section 405 of the Act while issuing notification dated 6/11/2012. Extension of 6 new wards to existing 60 wards has been notified by Commissioner while issuing notification dated 25/1/2014 in exercise of powers under Section 10 of the Act by virtue of delegation of powers of the State Government vide notification dated 24/2/2004 in exercise of powers under Section 426B of the Act. The delegations are in respect of powers provided for under Sections 10, 57, 79, 195(4) of Act. As such the entire exercise under the provisions provisions of Section 10 and Rules of 1994, by the Commissioner is found to be well within its competence and consequently of wards vide notification dated 25/1/2014 is in accordance with law. Under such circumstance, the judgment cited by learned counsel for the petitioner is quite distinguishable on facts and as no illegality is found in formation of new wards, petition is therefore, dismissed.