
(1990) 08 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2474, 2496 and 2507 of 1990

Vaidya Banwan Lal

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 08-08-1990

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1990) 2 WLN 310

Hon'ble Judges : I.S. Israni, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I.S. Israni, J.—In the above-mentioned three writ petitions, common questions of law have been raised, therefore, they are decided by single order. In each of these petitions...challenge has been given to the changes made in numbering of the wards in areas of Municipal Boards involved in these petitions in the various notifications issued in this record. It has been prayed that the numbers of the wards, as existed earlier, should be maintained and Municipal elections be held on the basis of the numbers of wards existing before the issue of new notifications, by which, numbers of wards have been changed.

2. Writ Petition No. 2496/90 has been filed regarding Municipal Board, Neem Ka Thana, District Sikar. It is submitted by MR. A.K. Sharma, learned Counsel, that the petitioner has remained Chairman of the Municipal Board from 1982 to 1986 and, thereafter, Board was superseded. In the beginning, the Board was divided into 13 wards for the purposes of elections by the State Government in the year, 1974. In the year, 1986, the number of wards came to be increased from 13 to 16, which continue till today. The Rajasthan Municipalities Act, 1959 (for brevity, the Act, 1959") was amended and Sub-section (3-A) came to be inserted after Sub-section (3) in Section 9 of the Act, 1959, which provides for fixing as nearly as possible 30% seats for women. To give effect to this provision, the State Government enacted the Rajasthan Municipalities Fixation of Scats (for Women

Belonging to Scheduled Castes, Scheduled Tribes & Determining of Wards for Women by Rotation) Rules, 1990 (for short, "the Rules, 1990"). It lays down the criteria for fixation of seats for women. The elections to various Municipal Boards/Municipal Councils were scheduled to be held some time in the month of July 1990, therefore, the State Government. Divided the Municipal Board, Neem Ka Thana into 16 wards vide Notification dated April 19, 1990, published in Rajasthan Gazette dated April 19, 1990, the photo stat copy of which is marked as Annexure 3. By this Notification, the State Government invited objections as contemplated by Sub-section (2) of Section 14 of the Act, 1959. In this notification, Wards No. 3, 6, 8, 12 & 15 were super type reserved for women, as contemplated by the Rules, 1990, except Ward No. 8. Ward No. 4, which is a reserved ward for Scheduled Castes and from where, the petitioner, who also belongs to. Scheduled Caste, usually contested the election, was shown to be General Ward and, in its place, Ward No. 9 was shown to be a Reserved Ward. The petitioner filed representation, containing his objections to the Secretary, Election Department through Collector, Sikar stating that looking to the number of persons belonging to Scheduled Castes Ward No. 4 should have been reserved for Scheduled Castes. Apart from this, it was also stated that as contemplated by Rule 3 of Rules, 1990, every third ward has to be reserved for women, therefore, instead of Ward No. 4, Ward No. 9, should be shown as reserved Ward for women. The State Government deputed the Electoral Registration Officer (SDM) Neem Ka Thana to make on the spot enquiry regarding objections submitted by the petitioner, who found that proportion of Scheduled Caste voters in Ward No. 4 was 43.34% while in Ward No. 9, it was only 31%.. The Collector. Sikar, therefore, proposed that objection raised by the petitioner be accepted and Ward No. 4 be reserved for Scheduled Caste candidates instead of Ward No. 9. The Collector also accepted the objection of the petitioner and recommended for treating Ward No. 9 as reserved for women candidates, who also stated that reservation of Ward No. 9 for women candidates would also be in consonance with Rule 3 of Rules, 1990. He further proposed that Ward No. 8 be treated as General Ward.

3. It is also pointed out that One Shri Mannalal Megotiya, President, Bhartiya Janata Party, Neem Ka Thana also submitted objections to the effect that instead of Wards No. 3, 6, 8, 12 and 15, Ward No. 1, 4, 8, 12 & 16 be reserved for women candidates. The Collector, after examining the objections, furnished his comments to the State Government, stating that the reservation of wards for women had been in accordance with the Rules, 1990 and, therefore, objections raised by Shri Megotiya could not be accepted. The photo-stat copy of the comments submitted by the Collector has been marked as Annexure 5.

4. It is submitted by the learned Counsel that the State Government vide final notification dated June 2, 1990, arbitrarily, illegally & with mala-fide intention, changed the numbers of the wards as proposed by Shri Megotiya, which is based on extraneous & political consideration and amounts to colourable exercise of power. The logical order was proposed by the Government of Rajasthan itself in

the preliminary notification dated April 19,1990, but the new numbers have broken the sequence of the wards in haphazard manner, as is evident from the map marked Schedule "A" with the petition;

5. It is submitted by Mr. R.S. Ralhore, learned Counsel, in Petition No. 2474/90, regarding Municipal Board, Jhunjhunu that the petitioner has remained Chairman of the Municipal Board from time to time. The Board is divided in 24 wards, out of which, 21 are general seats and three are reserved for Scheduled Caste persons. It is pointed out that after the amendment of Rule 9 of the Act, 1959, six seats have been further reserved for women of general category and one seat for women of Scheduled Caste category. By order dated January 4,1983 (Anx. 1), after hearing the objections, the State Government de-limited the boundaries of the wards and Wards No. 3, 13 & 21 were earmarked as reserved wards that elections to the various Municipal Boards shall be held in the year, 1990. A draft publication of wards was issued on April 25,1990 (Anx.2) and objections were to be received within 21 days. In the draft publication, Ward No. 19, of the petition, the proposed wards in various categories have been shown. Objections were raised regarding Wards No. 2, 8, 9 & 12. The Collector accepted objection regarding Ward No. 2, which was, therefore, changed from reserved category to that of general category and Ward No. 21 was proposed to be made a reserved ward for Scheduled Caste candidates. However, since Ward No. 21 had been already proposed to be reserved for women candidates, therefore, it was proposed that Ward No. 22 may be reserved for women candidates in place of Ward No. 21.

6. It is further submitted by the learned Counsel that, with mala-fide intention and extraneous & political considerations, at the behest of the Minister for Local-self Government, serial numbers of the wards were arbitrarily & illegally changed, without bringing about any change in the parcels of the wards, by issuing final notification regarding delimitation of wards on June 8,1990 (Anx. 3), the details regarding change of numbers have been mentioned in para No. 6 of the petition. It is pointed out that no boundary limits of any ward have been changed, but the wards have been simply renumbered with no rational criteria with ulterior object to give advantage to the Ruling Party and to eliminate the petitioner from contesting elections by converting Ward No. 19 (Old) to Ward No. 18(New) and keeping the same in reserved category.

7. In Petition No. 2507/90, it is submitted by Mr. Hunuman Chaudhary, learned Counsel, that there are, in all, 13 wards in Municipal Board, Bisau, District Jhunjhunu. It is pointed out that in the elections held in the year, 1970,1975 and 1989, Wards No. 1, 4 & 9, where Muslims live in greater majority members belonging to Muslim community were elected and returned to the Municipal Board. The preliminary notification was issued on April 25,1990 (Anx. 1), whereby, objections were invited for de-limitation of wards as required u/s 14 (2) of the Act, 1959. In this notification, no change in the number or set up of the wards was proposed and Wards No. 3, 6, 9 & 13 were proposed to be reserved

for women as contemplated in the amended provisions of Section 9 of the Act, 1959 and Rules, 1990. It is also pointed out that, however, in the final notification dated June. 1, 1990 (Anx. 2), the number of wards has been changed and Wards No. 1,4 & 9 were changed to new numbers 3, 9 & 5 and declared as reserved for women candidates. The details of the old & new numbers of the wards have been given in Para No. 6 of the petition. It is further pointed out by the learned Counsel that, in this way, the minority wards, in which the Mohammedans live in majority, have been declared to 1 c wards reserved for women candidates to eliminate the members, who usually return from the Muslim community. It is submitted that change of numbers has been done with mala-fide intention, arbitrarily & politically. It has no rational behind the same and has been done with extraneous & political consideration"s.

8. It is contended by the learned Counsel for the petitioners that the respondents have no power to merely change the numbers of the wards without changing the area of de-limitation of the particular ward. It is only when the area of the wards are changed, it becomes necessary to change the number of wards also. This has been done with mala fide intention, Arbitrarily a with political motive. It is also contended that a person can get himself registered only in one ward and, therefore, he is not entitled to contest election from any other ward. By change of numbers, certain wards have been deliberately declared to be wards reserved for Females/SC/ST candidates, which means that the person registered in a particular ward will not be able to contest elections from there, since his ward has been reserved for females or for persons belonging to SC/ST. Thus, he is debarred from contesting elections. It is also contended that the State Government has to accept the recommendations of the Collector, as he is representative of the Government and powers were delegated to him on behalf of the Government to hear the objections and decide the same by making his recommendations. Therefore, the Government cannot again change the recommendations made by the Collector.

9. It is contended by Mr. J.N. Saxena, learned Deputy Government Advocate, that the respondents are fully authorized to change the numbers of the wards, even though, no change in the area of the ward has been made. It is also contended that there is no mala-fide intention in doing so and the change of numbers has been done to put the wards in chronological order. It is further contended that it is evident from the provisions of Section 25 of the Act, 1959 that a person can contest from any ward of his choice, but is debarred from contesting from more than one ward. Therefore question of eliminating any person from contesting the election on account of change of numbers in the ward does not arise. It is also contended that from the pro forma, in which the Collector is to make his recommendations, it is clear that he only makes recommendations to the Government, which the Government is to consider and finally decide regarding de-limitation or numbers to be given to the wards. The Collector is not authorized to; decide the matter finally. I

10. I have heard all the learned Counsel for the parties and also gone through the documents on record. It will be necessary to go through the relevant provisions of the Act, 1959 and the Rules, 1990 to appreciate the arguments advanced by both the parties. Section 9 of the Act, 1990 deals with composition of the Boards. Sub-section (2) provides that the State Government shall specify the number of general seats and of seats reserved for SC/ST. Sub-section (3) provides that "the number of seats reserved as aforesaid shall, in relation to the total number of seats fixed for a board, bear the same proportion as the population of the (Scheduled Castes or Scheduled Tribes in the Municipality) bears to the total population thereof and such reservation shall be pejorative until the provisions of the Constitution relating to the reservation of seats for Scheduled Castes and Scheduled Tribes in the State Legislative Assembly cease to have effect." Sub-section (3-A) came to be inserted by way of amendment, which lays down that" subject to the minimum of one Seat, as nearly as may be, thirty percent (including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled in by direct election in every board, shall be reserved for women and allotted by rotation to different wards in a municipality." Section 13 provides the Board area to be divided into wards. Section 14 is regarding de-limitation of the wards. It provides that" (1) The State Government shall be order determine(a) the wards in which each municipality shall be divided for purpose of elections to the board; (b) the extent of each ward; and (c) the number of seats, if any, reserved for members of the Scheduled Castes, or Scheduled Tribes, as the case may be in any ward. (2) The draft or the order under Sub-section (1) shall be published for filing objections thereto with a period of not lese than (one month) and a copy of the same shall be sent to the board concerned for comments. (3) The State Government shall consider any objection and the comments received under Sub-section (2) and the draft order, shall, if necessary, be amended, altered or modified accordingly, and thereupon it shall become final." Section 19 is regarding registration to be made in one ward and in one place. It provides that (1) no person shall be entitled to be registered in the electoral roll for more than one ward in the same municipality. Sub-section (2) provided that no person shall be entitled to be registered in intellectual roll more than once, Section 24 speaks regarding qualifications for being a member of municipal Section 25 is regarding restrictions on contesting for elections for more than one ward. It lays down that "notwithstanding anything contained in Section 24 no person shall be entitled in cases where election to a seat is contested, to contest such election for more than one ward, and every person who may have filed, his nomination paper for seats to a board for more than one ward shall withdraw his candidature from all but one of the seats by a notice in writing which shall contain such particulars may be prescribed and deliver the same before three o" clock in the afternoon on the last date fixed for withdrawal. Provided that, if a person fails to withdraw his candidature from alt but one seat in the nam sece foed above, he shall be doer med to have within his candidature from all seals." Rules 2 of the Rules, 1990 runs as under:

As nearly as may, be thirty percent of the total number of seats reserved under subSection (3) of Section 9 shall be reserved for women belonging to the Scheduled Castes or Scheduled Tribes, as the case may be Rule 3 provides as under:

Determination of wards/seats for women by rotation

As far as the allotment of wards for women by rotation, requisite number of wards shall be determined as per the following manner:

Subject to any directions of the State Government every third ward of a Board shall be reserved for women, subject to maximum of 30% (including the number of seats reserved for women belonging to SCIST) and this process shall rotate in succession.

Provided further that allotment of wards for women belonging to the SC or the ST as the case may be, shall be determined in the aforesaid manner only out of the seats reserved under Sub-section (3) of Section 9.

11. What is to be examined now is, whether the de-limitation of wards and renumbering the same has been done in accordance with the provisions of the Act, 1959 and the Rules, 1990. It may be stated that delimitation of the wards is a delicate & complicated affair, which can seriously effect the result of the elections, if not properly done and can make a fair election impossible. It is evident that under the provisions of Section 14, the respondents No 1 is empowered, to delimit the wards and issue preliminary draft notification for the same, which has been done. Sub-section (3.) clearly provides that the State Government is empowered to consider any objections and the comments are received under Sub-section (2) and, thereafter, the draft order shall, if necessary, be amended, altered or modified and, thereafter, it shall become final. Therefore, a bare reading of the provisions of Sub-section (2) and Sub-section (3) of Section 14 clearly indicate that the Collector has to make his comments, which shall be received by the Government, who has the final authority to amend, alter or modify the same and, thereafter, issue a final notification regarding delimitation of the wards. Therefore, I do not find any force in the contenton of the learned Counsel for the petitioners that the State Government is not empowered to change the comments/recommendations made by the Collector while deciding objections received by him. I also do not find any force in the next contention raised by the learned Counsel for the petitioners that the change in numbers of wards,has resulted in debarring the petitioners and several others from contesting elections, since, They cannot contest from any other ward and when a particular ward has been reserved for SC/ST or for candidates women category. It is quite clear from the provisions of Section 25 of the Act that no person is entitled to contest elections for more that one ward and every person, who has filed his nomination papers for the seats to a Board for.more:than one ward shall withdraw his candidature from all but one of the seats by the notice in writing which shall contain such particulars as may be prescribed and deliver the

same before three O'clock in the afternoon on the last date fixed for withdrawal. If he fails to withdraw his candidature from all but one seat, he shall be deemed to have withdrawn his candidature from all seats. This clearly shows that a person can not only contest election for a seat in the Board from the ward, where he is registered, but also from any other ward in the Board area. The only restriction imposed is that a person is not entitled to contest for more than one seat as is permissible, while contesting elections to a Legislative Assembly or Parliament. Therefore, this contention, raised by the learned Counsel for the petitioner, as already stated, has no force. So far as the last contention regarding the change of numbers of the wards is concerned, the provisions of the Act, 1959, extracted above, clearly indicate that there has to be a reason, behind every change, that may be made, while delimiting the wards. Section 14 provides the procedure for publishing the draft notification, regarding de-limitation, hearing the objections, getting the comments of the Collector and, thereafter, publishing the final draft regarding de-limitation of the wards by the Government. It is only when the respondent No. 1 does not find the recommendations of the Collector, who was authorized by the Government itself to receive the objections and send his comments, is to be in accordance with the provisions of Section 14, it may make any changes to, bring it in conformity with the provisions of Section 14 of the Act, 1959. The delimitation of wards generally requires change in the area. If no change is made in area of wards that means the wards have not been delimited and the limitation of the area in each ward continues to be the same, therefore, it does not require any change in the existing wards. A bare reading of Rule 3 of the rules, 1990 shows that the process by which the reservation for the wards for women candidates shall be made, has also been laid down. This Rule provides that every third ward of a Board shall be reserved for a woman and this process shall rotate in succession. Thus, when the wards for women are reserved, the same have to be done in accordance with the process as laid down in this rule. This process requires that every third ward shall be reserved for woman. This, of course, is subject to any direction, which may be given by the State Government in this behalf. In Petition No. 2496/90, the Collector rejected the objections raised by Shri Megotiya and recommended with his comments that Wards No. 3, 6, 9, 12 & 15 be reserved for women. This was evidently done, keeping in view the provisions of Rule 3 of the Rules, 1990, which provides that every third ward should be reserved for women candidates. In Petition No. 2474/90, in the draft publication itself, every third ward was shown as reserved for women candidates and Ward No. 19 was shown as of general category. However, the numbers of the wards in final notification were changed ostensibly without any rational or reason. The area of the wards remained the same; only numbers were changed by the respondent No. 1. By this change, Ward No. 19 was renumbered as Ward No. 18 and was declared reserved for woman. Similarly, numbers of several other wards were also changed. It may also be pointed out that in Writ Petition No. 2496/90 no objection was raised before the Collector regarding change of numbers of ward as is evident from the comments of the Collector, the photo-stat copy of which has been filed by the respondent

No. 1, on direction of this Court, which is marked as Annexure R/I. It may also be pointed out that the Collector has dealt with four objections, whereas, in the beginning of this Pro-forma Annexure R/I, " + 1 = 5" seems to have been added to show that objection regarding change of numbers of the wards was also raised. It is, therefore, evident that since the Collector gave his comments/recommendations only regarding four objections, be this fifth objection, which is not dealt with by the Collector in Anx. R/I, has been added to ostensibly show that objection regarding change of number of wards had also been made at the time while objections were received by the Collector. The objections could be received only within 21 days of the, publication of the draft notification of proposed delimitation and any objection received thereafter, has no meaning. It evidently shows a manipulation at some level, which is most unfortunate and is highly deprecated. In Petition No. 2507/90 also, as in two other petitions mentioned above, no change in the area of any ward has been made, but only numbers of wards have been changed. The Respondent No. 1 has filed pro-forma Anx. R/I on direction of this Court, in which, the Collector has given his comments regarding the objections received by him. These comments, as already stated, could have been ignored and changed only if Respondent No. 1 the same to be not in accordance with the provisions of the Act and the Rules. If the comments are in accordance with the provisions of the Act & the Rules, there is no reason for any change in the same, meaning thereby any change/amendment can be made by Respondent No. 1 only when the comments/recommendations of the Collector are in accordance with the relevant provisions. However, I do not find any force in the contention of Mr. Hanuman Chaudhary, learned Counsel, that the Wards No. 1, 4 & 9 have always been minority wards and, therefore, no change is required in these wards. There is no provision for any minority wards in the Act, 1959 or the Rules, 1990. The change in the wards can be always made in accordance with the provisions of the Act, 1959 and the Rules, 1990, while reserving the wards in rotation for women candidates. The number of wards & reservation, as published in draft notification of delimitation of wards, details of which have been given in Para No. 6 of the petition, therefore, needed no change, even though, Ward No. 9 has been shown to be reserved for women candidates. I am, therefore, of the confidently opinion that the change in the number of wards in all the three Municipalities, regarding which the writ petitions have been filed, has been made arbitrarily, illegally and against the provisions of Act, 1959 and Rules, 1990.

12. In Petition No. 2496/90, I find merit in the contention raised by the learned Counsel for the petitioner that Ward No. 4, as shown in the notification of draft publication, should be reserved for Scheduled Castes and not Ward No. 9, as shown in the final publication regarding de-lamination of wards. It is evident from Sub-section (3) of Section 9 of the Act, 1959 that the number Of seats for SC/ST shall be reserved, keeping in view the population of these communities in the area of the Board. Therefore, it is logical that such wards should be reserved for SC/ST, in which the population of SC/ST persons is proportionately higher in

number. From the comments of the Collector, it is clear that the population of Scheduled Caste voters in Ward No. 4 is 43.34%, while in Ward No. 9, it is only 31%. Therefore, the Collector rightly recommended vide Anx. 5 in accordance with the letter & spirit of Sub-section (3) of Section 9 of the Act, 1959 that Ward No. 4 be reserved for Scheduled Caste candidates in place of Ward No. 9. I am, therefore, of the considered opinion that it is Ward No. 4, which should have been reserved for Scheduled Caste candidates, keeping in view the percentage of population. It is well settled that under Article 14 of the Constitution, any law or an executive act, which is performed under the colour of law, can be struck down, being discriminatory.

13. In the result, it is held that the final delimitation of wards done by the Respondent No. 2496/90 by order dated June 2, 1990 (Anx. 6) and in Petition No. 2474/90 vide final notification dated June 8, 1990 (Anx. 3) & in Petition No. 2507/90 vide final notification dated June 1, 1990 (Anx. 2), being arbitrary, illegal, discriminatory and against the provisions of the Act, 1959 & the Rules, 1990 are quashed. It is, therefore, directed that no election shall be held as per the delimitation made in the above-mentioned three final notifications, which have been quashed. It is further directed that the delimitation of the wards should be made at the earliest in accordance with the provisions of the Act, 1959 and the Rules, 1990.

14. The petitions are allowed, as indicated above, without any order as to costs.