

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 9th February, 2015

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W.P.(C) No.6852/2014

DWARKA COURT BAR ASSOCIATION

..... Petitioner

Through: Mr. Sudhanshu Batra, Sr. Adv. with
Mr. Gaurav Duggal, Mr. Dinesh
Mudgil, Mr. Rajiv Yadav, Mr. Sunil
Sherawat, Mr. Avnish Rana & Mr.
Shekhar Kumar, Advs.

Versus

HON'BLE LT. GOVERNOR OF DELHI & ANR... Respondents

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advs.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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RAJIV SAHAI ENDLAW, J

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), impugns the Minutes dated 23rd July, 2014 of the meeting held under the Chairmanship of the respondent No.1 regarding re-organization of Revenue Districts and seeks a direction to the respondents i.e. Lieutenant Governor of Delhi and the Government of National Capital Territory of Delhi (GNCTD) to implement the recommendations dated 9th

September, 2013 made by the Committee constituted by the GNCTD and revived vide order dated 7th January, 2013 of this Court in W.P.(C) No.7722/2014.

2. It is inter alia the case of the petitioner:

- (a) that vide order dated 1st May, 2000 of the Supreme Court in W.P.(C) No.741/1989, Delhi was ordered to be divided into nine separate Civil Districts;
- (b) that Notification dated 28th June, 2000 was issued in this regard and as per which the territorial limits of the nine Civil Districts of i) New Delhi, ii) South, iii) North, iv) North-West, v) Central, vi) East, vii) North-East, viii) West, and, ix) South-West, was to be co-terminus with the existing nine Revenue Areas known as Revenue Districts;
- (c) vide Notification dated 21st October, 2008, the specific boundaries of the nine Civil Districts were re-defined;
- (d) that vide Code of Criminal Procedure (Delhi Amendment) Act, 2011, Section 8(i) of the Code of Criminal Procedure, 1973 was amended, empowering the GNCTD to bifurcate the metropolitan area of Delhi into

nine separate metropolitan areas and the consequent creation of nine separate Sessions Divisions;

- (e) that vide Notification dated 11th September, 2012, eleven Districts / Sessions Divisions were created by altering and modifying the limits of the existing Sub-Divisions / Tehsils;
- (f) that the petitioner filed W.P.(C) No.7722/2012 contending that the Notification dated 11th September, 2012 caused great hardship to the people of South-West District and was contrary to the principle of justice at door step; it was the contention of the petitioner that some of the areas which are nearer to Dwarka Court Complex had vide the said notification been shifted to a far away Court complex;
- (g) that it was the stand of the GNCTD in the said writ petition that the representation earlier made by the petitioner in this regard had been forwarded to the convener of the Committee on the basis of the recommendation whereof the areas comprising each of the eleven Revenue Districts were determined; however it was found that the said Committee had become *functus officio* and therefore no decision could be taken on the representation of the petitioner; it was also contended by

the GNCTD that the said Committee was required to be revived and thereafter only any decision on the representation of the petitioner could be taken;

- (h) this Court vide order dated 7th January, 2013 in W.P.(C) No.7722/2012 earlier filed by the petitioner directed that “.... the Government shall revive the Committee and the representation of the petitioner association made on 19.9.2012 shall be consideredThe respondent will then take appropriate decision on the recommendations of the said Committee”;
- (i) however on 19th February, 2013, this Court by an administrative order created 11 Judicial Districts in NCT of Delhi and which resulted in six police stations i.e. Inderpuri, Naraina, Delhi Cantt, Sagarpur, IGI and IGI Metro which were part of the South-West District being taken away from Dwarka District Courts and shifted to New Delhi District i.e. at Patiala House Courts, New Delhi;
- (j) that these police stations are situated in close proximity to the Dwarka Court Complex and far away from the Patiala House Courts;

- (k) that the petitioner filed W.P.(C) No.1216/2013 impugning the aforesaid; during the hearing of the said writ petition on 25th February, 2013, this Court found that the earlier order dated 7th January, 2013 had remained unimplemented till then; accordingly, vide order dated 25th February, 2013, the Committee which vide order dated 7th January, 2013 (*supra*) had been ordered to be revived was directed to be revived within a maximum period of two weeks therefrom and it was further directed that the said Committee would examine the representation of the petitioner including by inviting suggestions from various bar associations and take a decision within six weeks therefrom;
- (l) that the Committee was revived and which considered the representations of the various bar associations as well as the comments of the Revenue Departments and Delhi Police and submitted a report recommending exclusion of the eight Revenue villages of i) Budhela, ii) Nangli Jalib, iii) Posangipur, iv) Asalatpur, v) Hastal, vi) Rajapur Khurd, vii) Nawada Mazra Hastal, and, viii) Matiala situated in close vicinity of Dwarka Court Complex from West District and inclusion thereof in the South-West District;

- (m) that the aforesaid recommendations of the Committee were considered in the meeting (supra) held on 23rd July, 2014 and the relevant portion of the Minutes whereof is as under:

"Hon'ble Lt. Governor expressed his displeasure at the incomplete proposal and not taking the views of the villagers / residents of the areas, in this regard. Hon'ble Lt. Governor was of the opinion that the Committee should be chaired by a Secretary from GNCT of Delhi, having as its members, the Divisional Commissioner, concerned Dy. Commissioners, representative of Delhi Police and other stakeholders of the Terms of Reference of the Committee should be properly drafted. Chief Secretary shall issue necessary orders, Hon'ble Lt. Governor instructed Law Department to keep the proposal in abeyance, for the time being.

The meeting ended with vote of thanks to the Chair."

3. It is the contention of the petitioner:
- (i) that the decision aforesaid taken in the meeting held on 23rd July, 2014 is in violation of the orders in the earlier writ petitions filed by the petitioner;
- (ii) that inspite of this Court in the said orders expressing urgency, the respondents caused delay at each and every stage;

- (iii) that the action of the respondents of holding the recommendations of the Committee in abeyance and directing constitution of a fresh Committee is causing grave and substantial loss of public interest to residents of the eight villages aforesaid who have to transverse a distance of approximately 15 to 20 kms. in case of litigations i.e. to Tis Hazari Court when Dwarka Court Complex is situated within a distance of 3 to 5 kms.;
- (iv) that the Dwarka Court Complex is also accessible to the residents of the said villages through the Blue Line of Delhi Metro Rail Corporation;
- (v) that the infrastructure available at Dwarka District Courts is far better than what is available at the other District Courts;
- (vi) that the reason given for not accepting the recommendations i.e. of the views of the residents of the said eight villages having not been taken by the Committee is ambiguous and cryptic;
- (vii) that the reason given in the decision dated 23rd July, 2014 of the views of the residents of the said eight villages having not been taken is also fallacious because the said residents had not been consulted even at the time of their inclusion in the West District;

- (viii) that this Court having directed the representation of the petitioner to be considered by the Committee earlier constituted, by reviving the same, the respondents could not after receiving the recommendations of the said revived Committee, constitute another Committee;
- (ix) that the respondents are withholding the decision on the representation of the petitioner on flimsy grounds, solely to put the issue on the backburner; and
- (x) that in the meanwhile, the new infrastructure created at the Dwarka Court Complex is lying under-utilized.

4. The petition came up for hearing on 1st October, 2014 when the counsel for the respondents appearing on advance notice sought time to get instructions about the steps if any taken pursuant to the impugned Minutes dated 23rd July, 2014.

5. The respondents have filed a counter affidavit inter alia stating:

- (a) that the revived Committee had recommended the aforesaid eight Revenue Areas / villages of the West District to be taken out of the Patel

Nagar Sub-Division of West District and to be added to the Dwarka Sub-Division of South-West District;

- (b) that approval of the Finance Department, GNCTD was solicited and they had given their no objection thereto if no financial implications were entailed;
- (c) that accordingly, a proposal in this regard was prepared for placing the same before the Council of Ministers of the Legislative Assembly of Delhi;
- (d) that however before the said proposal could be considered, the Legislative Assembly of Delhi was suspended consequent to the resignation of the Chief Minister;
- (e) that hence the proposal was directly submitted to the Lieutenant Governor and the comments of the Principal Secretary, Revenue-cum-Divisional Commissioner invited;
- (f) that the District Magistrate (West) vide his comments agreed in-principle of transferring above mentioned eight revenue estates out of Patel Nagar Sub-Division of West District and adding these areas to the Dwarka Sub-

Division of West Delhi but further proposed that the remaining of the 31 revenue estates falling under the West District revenue estate be also re-distributed to rationalize the workload on the revenue authorities working in the three sub-divisions of Punjabi Bagh, Patel Nagar and Rajouri Garden;

- (g) that a proposal in this regard was also prepared;
- (h) that however the Lieutenant Governor in the meeting held on 23rd July, 2014 observed that the proposal was incomplete and the views of the villagers / residents of the areas concerned were not taken by the Committee and directed that a fresh Committee to be constituted;
- (i) that a fresh Committee was accordingly constituted vide letter dated 24th September, 2014 with direction to submit report within three months;
- (j) that the said fresh Committee has a wider representation at a comparatively higher / senior level.

6. The petitioner has filed a rejoinder to the aforesaid counter affidavit but need to advert thereto is not felt.

7. We heard the counsels on 11th and 18th December, 2014 and reserved judgment.

8. Since the stand of the counsel for the respondents was that newly constituted Committee was expected to submit its report on 24th December, 2014, we directed the respondents to place the same also on record on or before 31st December, 2014. However the same was not placed on record. The counsel for the respondents upon being reminded has on 28th January, 2015 handed over some papers as per which the newly constituted Committee vide letter dated 5th December, 2014 has requested for extension of time for another three months from 24th December, 2014 for furnishing the report.

9. We had during the hearing enquired whether any of the other bar associations, particularly the Bar Association of Tis Hazari Courts from whose territorial jurisdiction the said eight villages have been recommended to be shifted to the Dwarka Court territorial jurisdiction, have any objection to the said report.

10. We were told that they have no objection.

11. We similarly enquired whether any of the villagers had protested. Again the answer was in the negative.

12. We have given our thought to the matter.

13. Though undoubtedly, the re-organization of districts is an executive function but at the same time it cannot be lost sight of that vide order dated 7th January, 2013 in W.P.(C) No.7722/2012 earlier filed by the petitioner and which order is in the nature of a consent order, it was directed that the representation made by the petitioner be considered by the old Committee by revival thereof and that the respondents will take appropriate decision on the basis of the recommendations of the said Committee. Again vide order dated 25th February, 2013 in W.P.(C) No.1216/2013 earlier filed by the petitioner, the earlier order dated 7th January, 2013 was reiterated and the time schedule for taking action thereunder was prescribed. Though the respondents, if of the opinion that the matter should be considered by a new Committee instead of by reviving the old Committee or that the views of the villagers likely to be affected be also taken into consideration, had an opportunity to state so on 25th February, 2013 but again did not do so.

14. Though the respondents are not bound by the recommendations so made by the revived Committee but still when a Committee is constituted to make recommendations, ordinarily, its recommendations are to be accepted unless there are valid reasons for not accepting the said recommendations; else, the very purpose of constituting an expert Committee would be lost.

15. The Supreme Court in *S. Chandramohan Nair Vs. George Joseph* (2010) 12 SCC 687, in the context of appointment to the post of member of a State Consumer Disputes Redressal Commission and which appointment was to be made by the State Government on the recommendation of the Selection Committee, held that though the State Government is not bound to accept the recommendations by the Selection Committee but if it does not want to accept the recommendations, then reasons for doing so, have to be recorded and the State Government cannot arbitrarily ignore or reject the recommendations of the Selection Committee. Similarly in *Union of India Vs. N.P. Dhamania* 1995 Supp. (1) SCC 1 held that appointing authority can choose to differ from the recommendations but must give the reasons for the same. A Division Bench of this Court in *Akashvani & Doorshan Administrative Staff Association Vs. Union of India* MANU/DE/1641/2002 applied the said principle to the recommendations of the Pay Commission also and held that

though the Central Government is not bound to accept the said recommendations but it is also beyond any cavil of doubt that such recommendations having been made by an expert committee are ordinarily required to be accepted, unless there exists a cogent and compelling reason therefore.

16. In *M/s. Sitaram Sugar Co. Ltd. Vs. Union of India* (1990) 3 SCC 223 it was observed that whether an order was characterized as legislative or administrative or quasi-judicial, or whether it was determination of law or fact, the judgment of the expert body, entrusted with the power is generally treated as final.

17. The Supreme Court in *M.V. Thimmaiah Vs. Union Public Service Commission* (2008) 2 SCC 119 reiterated that normally the recommendations of the Selection Committee cannot be challenged even in a Court except on the ground of *mala fides* or serious violation of statutory rules. To the same effect is the judgment of the Supreme Court in *Joint Action Council of Service Doctors' Organisations Vs. Union of India* (1996) 7 SCC 256.

18. Even in academic matters the principle is that the decision of the experts is not to be lightly interfered with. Reference if any required can be made to the

The University of Mysore Vs. C.D. Govinda Rao AIR 1965 SC 491 and to ***Km. Nelima Misra vs. Dr. Harinder Kaur Paintal*** (1990) 2 SCC 746.

19. In our opinion the said principle can appropriately be extended to the present situation also.

20. From the record as well as the counter affidavit of the respondents, it transpires that the recommendations of the revived Committee are acceptable to all concerned. The Minutes of the Meeting held on 23rd July, 2014 in which the said aspect was considered also, though record the displeasure and observation of the Lieutenant Governor that the proposal put up before him was incomplete, but does not describe as to what was incomplete therein nor are any particulars in this regard given in the counter affidavit. The only reason given is of the views of the villagers/residents of the area having not been taken.

21. The respondents however did not controvert the specific plea of the petitioner that the villagers / residents of the areas to be comprised in each district were not consulted on the earlier occasion also. It belies logic, when they were not earlier consulted, why the need for consulting them should now be felt.

22. We also do not know as to how the said villagers / residents are to be consulted; is it to be by holding a plebiscite? We remind the respondents that all the Gaon Panchayats (which administered the Gaon Sabhas under the Delhi Land Reforms Act, 1954) in Delhi were superseded by the Administrator, Delhi vide Notification dated 25th January, 1990 and all duties, powers and functions of the Gaon Panchayat were to be exercised, performed by the Dy. Commissioner (See *Jogender Singh Vs. Govt. of NCT of Delhi* W.P.(C) No.5393/2007 of this Court decided by the Division Bench on 7th May, 2010). On decentralization of Delhi, first into nine and then eleven districts, vide Notifications dated 25th June, 1997 and 8th January, 2004, such duties are to be performed by Dy. Commissioners of the concerned district. No elections have been held of the Gaon Panchayats as yet. The counter affidavit also does not state as to how the newly constituted Committee intends to go about the process of consulting the villagers. The concerned revenue officials i.e. the Dy. Commissioners have already been consulted.

23. The reason thus given for not accepting the recommendations of the earlier Committee constituted and revived under orders of the Court and for constituting a fresh Committee is thus indeed no reason.

24. However the fact remains that the decision has to be taken by the respondents and this Court cannot appropriate to itself an executive function. Thus the only relief which can be granted to the petitioner is, to set aside the decision taken on the Meeting dated 23rd July, 2014 and to direct the respondents to now consider the report submitted by the revived Committee and to take a decision thereon on or before 31st March, 2015. We have given such long time for the reason that the elections to the Legislative Assembly of Delhi are now scheduled to be held on 7th February, 2015 and some time may be taken thereafter for the new dispensation to come in place. It appears that earlier also, it was the said Legislative Assembly which was to take the decision and the matter had to be considered by the respondent No.1 only for the reason of the Legislative Assembly having been suspended.

The petition is disposed of.

No order as to costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

FEBRUARY 9, 2015

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