

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 21850 of 2015 (O&M)

Date of decision: 07.12.2016

Residents Welfare Federation

.....Petitioner

Vs.

UT Administration and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Ashok Sharma Nabhewala, Advocate for the petitioner.

Mr. Suvir Sehgal, Sr. Standing Counsel for U.T, Chandigarh
with Mr. D.K. Singhal, Advocate for respondents No.1 to 3 &
5.

Ms. Deepali Puri, Advocate for respondent No.4.

Ajay Kumar Mittal,J.

1. By way of present petition under Articles 226/227 of the Constitution of India, the petitioner prays for a direction to the respondents to delimit Ward No. 14 of U.T. Chandigarh in view of the provisions of the Punjab Municipal Corporation Act, 1976 as extended to UT Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 (in short, "the 1994 Act") read with the Delimitation of Wards of Municipal Corporation Order, 1995 (in short, "the Order 1995").

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a welfare federation and is representing the cause of residents of Sector 45, Chandigarh. The State of Punjab enacted the Punjab Municipal Corporation Act, 1976 and in exercise of powers under Section 37 thereof, vide notification, it was extended to U.T. Chandigarh w.e.f. 24.05.1994 by

the Municipal Corporation Law (Extension to Chandigarh) Act, 1994. Under the 1994 Act, Section 8 deals with creation of wards and the Administrator is given the power to divide the City into single member wards in such manner that the population of each of the wards shall, so far as, practicable be the same throughout the City. The Administrator has divided the City into 26 Wards at the time of constitution of Municipal Corporation in Chandigarh and there has been no increase in the Wards till date. The Chandigarh Administration, Department of Local Government, vide notification dated 16.05.1995 in exercise of the powers under Section 34 of the 1976 Act as extended to UT of Chandigarh by the 1994 Act, notified the Rules called the Municipal Corporation, Chandigarh (Preparation of Electoral Rolls) Rules, 1995 (in short, “the Rules”). Under the Order 1995, Para 3 deals with constitution of Board. The Board is assigned the duty to divide the City into number of wards as may be necessary with reference to Section 8 of the 1994 Act. Under Para 4 (ii), thereof, the function of the Board is to readjust the wards as and when the limits of the city are altered or there is increase in the population of the city or there is abnormal variation in population or voting figures at some of the wards of the city which required such readjustment. Para 6 of the Order 1995 deals with the principles for delimitation of Wards of City. The petitioner has been agitating its claim with the respondents for creation of new ward for residents of Sector 45 separate from village Burail, which is at present integrated in Ward No.14. According to the petitioner, the constitution of Ward No.14 is unlawful because the clubbing of Urban and Rural area together is not permissible under the 1994 Act and the Rules nor is the object of creation of wards under the 1994 Act. The petitioner represented to the respondents against this

clubbing and made a demand for readjustment/creation of new ward for the residents of Sector 45-A, B, C & D on 13.02.2009, Annexure P-2. Vide communication dated 24.03.2009, Annexure P.3, the Secretary Municipal Corporation asked the Area Councillor to send his comments on the representation of the residents. The petitioner avers that the Area Councillor belongs to Village Burail and has large number of unapproved Guest Houses. Thus, he did not support the cause of the residents. In the year 2011, the Census data was not available for the purpose of delimitation of wards, although the Municipal Corporation contemplated the proposal to increase the wards from 26 to 32 in the wake of increase of around 1.54 lacs population in 2011 Census as compared to 2001. The State Election Commissioner also proposed the idea of increase of wards. Finally, on 14.06.2011, the Advisor to the Administrator, U.T Chandigarh held meeting to discuss the process of delimitation of Wards of Municipal Corporation of Chandigarh. The constitution of Ward No.14 includes Village Burail and Sector 45. The density of population is extremely high. According to the petitioner, there is a total disparity in the utilization of funds under the Councillor Fund. Besides this, due to the removal of Colony No.5, a large of population has started residing in Village Burail, resulting into total ignorance of the residents of the Sector. Thus, the petitioner submits that keeping in view the population base, as the object of delimitation, one single ward can be independently created for Village Burail. The petitioner through its counsel obtained information under the Right to Information Act, 2005 (in short, "the RTI Act") with regard to the total budget, amount of budget utilized year wise from the year 2006 to till date of Village Burail and Sector 45 and the number of wards, therein vide application dated 18.04.2015 Annexure P-7.

According to the information, data of utilization of funds in Ward No.14 is more than explicit and indicate that the Area Councillor has totally utilized the funds in Village Burail and hardly spent any money on the development of Sector 45. Hence, the petitioner through the instant petition prays for issuance of a direction to the respondents to act in accordance with the provisions of Section 8 of the 1994 Act read with Para 4 of the 1994 Order and 1995 Rules.

3. A written statement has been filed on behalf of the respondents through Additional Secretary Local Government, Chandigarh Administration, Chandigarh wherein it has been inter alia stated that for the purpose of constitution of elected body for the fifth term of the Municipal Corporation, Chandigarh to be held in the third week of December 2016, the Chandigarh Administration could not make any change in delimitation order issued in the year 2006 in respect of wards of the said corporation as Census Department, UT Chandigarh did not supply sector wise and colony wise figures of population of UT Chandigarh of the Census 2011 which is the basic requirement for the re-delimitation of wards of municipal area. It has been further stated that since the area of erstwhile Village Burail was included in the limits of the Municipal Corporation, Chandigarh due to the fact that there had been great density of population due to influx thereof and people living therein had been involved in non-agricultural activities. Thus, the area of erstwhile Village Burail has assumed the urban character and was required to be declared urban area and included in the limit of Municipal Corporation, Chandigarh vide notifications Annexures R.1 and R.2 dated 25.10.2006 and 19.9.2006 respectively. On these premises, prayer for dismissal of the petition has been made.

4. Learned counsel for the petitioner submitted that since the Act provides population as the base for delimitation, keeping in view the population of Village Burail, an independent ward can be formulated. He further submitted that clubbing the sector 45 with Village Burail has resulted into total discarding the interest of the public living therein and for the last 15 years, hardly any funds allotted by the Municipal Corporation have been spent for the development of Sector 45. Reliance was placed on judgment of the Apex Court in *Atma Singh vs. State of Punjab*, AIR 1981 SC 1173. On the other hand, learned counsel for the respondents opposed the submissions made by the learned counsel for the petitioner.

5. We have heard learned counsel for the parties.

6. It is well-settled that delimitation is a matter in the purview of the Government and interference by the Court is called for if there is some patent illegality, irrationality or serious procedural irregularity as held by the Apex Court in *State of UP and others Vs. Pradhan Singh Kshettra Samiti and others*, AIR 1995 SC 1512, *Anurag Narain Singh Vs. State of UP and others*, 1996(6) SCC 303 and Full Bench of this Court in *Pran Nath Bhatia Vs. State of Punjab*, 1977(3) PLR 44. It is the prerogative of the State to decide about the extension of the municipal areas and it is not for the court to venture unless any action of the State Government or its functionaries is shown to be actuated and influenced by apparent bias and malafide based upon specific and concrete allegations on the basis of verifiable facts. The power of judicial review in such matters has to be exercised with utmost care and has to be circumscribed with constitutional and statutory

limitation. In *Pradhan Sangh Kshettra Samiti*'s case (supra), the relevant observations made by the Apex Court read as under:-

“45.It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot interfere with the same....”.

The judgment in *Pradhan Sangh Kshettra Samiti*'s case (supra) was followed by this Court in *Mrs. Swaran Lata Jain and others vs. State of Punjab and others*, 2008(4) PLR 577 and *Gram Panchayat Bhadson vs. State of Punjab and others*, 2010(4) PLR 670.

7. Learned counsel for the petitioner was unable to show that there was any statutory provision with reference to which the petitioner could claim that the respondents be directed to delimit Ward No.14 in the light of the 1994 Act. Once the petitioner had failed in doing so, no mandamus could be issued as there was no legally enforceable right. It was for the respondents to have created delimitation of the wards which was increased from 20 to 26 from the year 2006 to 2011. In *Atma Singh's* case (supra) relied upon by the learned counsel for the petitioner, it was observed by the Apex Court that purpose of delimitation is to ensure that every citizen gets fair representation in the municipality and the State Government cannot proceed to hold elections without delimitation of municipality into wards. The proposition of law is unexceptionable. Again, it is within the domain of the Government to decide about the delimitation of the wards. Thus, the petitioner cannot derive any benefit from the said decision. Consequently, no ground for interference in

exercise of writ jurisdiction under Articles 226/227 of the Constitution of India is made out. Finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

December 07, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether referred to reporter or not

Yes/No
Yes