

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.2084 of 2017

Date of Decision.03.02.2017

Rishi Raj Rana

.....Petitioner

Vs

The State of Haryana and others

.....Respondents

Present: Ms. Mannu Chaudhary, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Learned counsel for the petitioner is aggrieved of the impugned order dated 02.09.2016 (Annexure P-1) whereby for the purpose of delimitation of the wards, Ad hoc Body has been constituted by granting liberty to associate the persons indicated therein. The impugned order reads thus:-

“No.18/134/2016-3C1:- In exercise of powers conferred under Rule 4 of the Haryana Municipal Corporation Delimitation of Ward Rules, 1994, an Ad hoc Body is hereby constituted for the delimitation of wards of Municipal Corporation, Gurgaon due to non-existence of elected body presently in Municipal Corporation, Gurgaon, as under:-

(a) Deputy Commissioner

Chairman

*(b) Director, Urban Local Bodies, Haryana
or his representative*

Member

*(c) Administrator & Commissioner, Municipal Corporation, Gurgaon or his representative
(now below the rank of Extra Assistant Commissioner).*

The Ad hoc Body shall associate with itself the following members belonging to various interests/groups:-

- 1. Sh. Umesh Aggarwal, MLA, Gurgaon.*
- 2. Sh. Vimal Yadav, Ex-Mayor, Municipal Corporation, Gurgaon.*
- 3. Sh. Dalip Sahni, Ex-Municipal Councilor, the then Municipal*

Council, Gurgaon.

4. *Smt. Gargi Kakkar, Ex-Municipal Councilor, the then Municipal Council, Gurgaon.*

5. *Sh. G.L. Sharma, House No.720, Sector 15, Part II, Gurgaon.*

6. *Sh. Anil Yadav s/o Shri Shamsher Singh, House No.A-748, Sushant Lok-I, Gurgaon.”*

Ms. Mannu Chaudhary, learned counsel appearing for the petitioner submits that the aforementioned constitution of the Ad hoc Body is in derogation/is not in consonance with Rule 4 of the Haryana Municipal Corporation Delimitation of Ward Rules, 1994, which has been extracted in paragraph 4 of the writ petition, according to which, the Ad hoc Body has to associate not more than five members belonging to various interests or groups out of the sitting members of the Corporation or out of the member of the dissolved Municipality. The petitioner being an elected member, though his tenure has expired, should have been joined as an associate in the Ad hoc Body, being member of the dissolved municipality.

She further submits that the constitution of the Ad hoc Body is not in accordance with Rules aforementioned, thus, would be liable to be set aside. Rule 4 as extracted in the writ petition reads as under:-

“4. Constitution of Ad hoc Body:-

(1) For the purpose of carrying out the provisions of these rules, the Government shall constitute an Adhoc Body for each Corporation consisting of the following members namely:-

- | | |
|--|---------------------|
| <i>(a) Deputy Commissioner</i> | <i>....Chairman</i> |
| <i>(b) Mayor or any member as his representative</i> | <i>...Member</i> |
| <i>(c) Director, Local Bodies or his representative</i> | <i>.....Member</i> |
| <i>(d) Commissioner or his representative not below the rank of Extra-Assistant Commissioner</i> | <i>....Member</i> |

(2) The Adhoc Body shall associate with itself not more than five members belonging to various interests or groups out of the sitting members of the Corporation or out of the member of the dissolved Municipality.

(3) In case municipality mentioned in sub-rule (2) does not exist, the Adhoc Body shall associate with itself not more than five members

belonging to various interests or groups from Municipal area.”

On perusal of sub-rule (2) of Rule 4, it is evident that Ad hoc body has been given power to associate not more than five members belonging to three sets of persons namely (i) persons belonging to various interest; (ii) groups out of the sitting members of the Corporation and (iii) out of the member of the dissolved Municipality.

On juxtaposition of the members ordered to be associated for the purpose of undertaking the task of delimitation are though more than five but one is a sitting MLA. He has to be excluded and thus, there are total five members, out of which one is Ex-Mayor, two are Ex-Municipal Councillors and two are residents of the ward, therefore, they were falling within one of the clauses indicated above.

I do not find any reason to differ with the impugned order (Annexure P-1), much less, the same cannot be said to be passed illegally or arbitrarily.

The next prayer of the petitioner is that the survey should be conducted strictly in consonance with the Rules aforementioned. I find little force in the submission of Ms. Mannu Chaudhary, for, her apprehension has surfaced owing to the fact that perhaps the delimitation is based upon the 2011 census whereas it should have been as per door to door survey carried out by the staff deputed by the Commissioner, particularly with regard to Scheduled Castes and Backward Classes as per sub-section 5 of Section 6 of the Haryana Municipal Corporation Act, 1994. The same reads as under:-

“6. Fixation of seats of Corporation.-

xxxxx

xxxxx

xxxxx

xxxxx

(5) Wards reserved for the members of Scheduled Castes and

Backward Classes shall, as far as practicable, be located in those areas where the proportion of their population to the total population of the Corporation is the largest.

Explanation.- Here “population” means the population as ascertained locally by the staff, deputed by the Commissioner, after going from door to door in the corporation.”

I am in agreement with the aforementioned contention and prima facie, of the view that the Ad hoc Body is required to be adhered to the provisions of law. It is expected that they will undertake the exercise by adhering to the provisions which are extracted above.

It has also been pointed out that objection in this regard has been rejected vide notification dated 04.02.2016 (Annexure P-9). The petitioner is at liberty to seek the vindication of his grievance in accordance with law but not through the writ petition.

With the aforementioned observations, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

February 03, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No