

In the High Court of Punjab and Haryana at Chandigarh

CWP No.12824 of 2016

Date of decision: October 22, 2018

Jagmal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CWP No.23162 of 2016

Satpal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Dr. Surya Parkash, Advocate for the petitioner.
Mr. S.S. Pannu, Deputy Advocate General, Haryana.
Mr. Deepak Balyan, Advocate
for respondent No.4 (in CWP No.12824 of 2016)
Mr. Lokesh Sinhal, Advocate
for respondents No.3 and 4.

RAKESH KUMAR JAIN, J (ORAL)

This order shall dispose of two petitions bearing
CWP No.12824 of 2016 titled as **Jagmal Vs. State of Haryana
and others** (hereinafter referred to as 'the first petition') and CWP

No.23162 of 2016 titled as **Satpal Vs. State of Haryana and others** (hereinafter referred to as 'the second petition') as the issue involved in both the petitions is common. However, for the sake of brevity, the facts are being extracted from the second petition.

The petitioner is the resident of Narwana, District Jind. He has prayed for the issuance of a writ in the nature of certiorari quashing the election notification dated 27.05.2016 of respondents No.11 to 33 on the ground that there was tampering of the record relating to delimitation of the wards and has also prayed for to direct respondent No.1 to hold a high level inquiry into the alleged fabrication/forgery of the list of delimitation.

In brief, it is an admitted fact that the election of the Municipal Council, Narwana which is divided into various wards has already been held. The wards are constituted in terms of the provisions of the Haryana Municipal Delimitation of Ward Rules, 1977 (for short 'the Rules'). The process of delimitation of wards was initiated with the constitution of Adhoc Committee in terms of Rule 4 of the Rules. The Adhoc Committee got the survey of the population through a surveyor and on the basis of his report, made a proposal of the delimitation of the wards in terms of Rule 7 and sent the proposal of the delimitation of the wards in terms of Rule 8. As per procedure, any person having an objection or suggestion may submit the same to the competent authority before the date specified and after considering the said objections/suggestions, the final order of delimitation of wards is published in terms of Rule 10.

The petitioner in the second petition filed the objections to the proposed delimitation of wards but since the objections were not considered, therefore, approached this Court by way of CWP No.12158 of 2015 which was disposed of with the following order:

“That instant writ petition has been filed challenging

the Wardbandi (delimitation of wards) carried out for the election of Nagar Parishad, Narwana (P-7). The precise case of the petitioner is that mandatory procedure contemplated under the statute or the rules framed there under for conducting physical survey of the area before finalization of the voter list, was not followed, hence, the exercise of wardbandi is ex-facie illegal.

The record reveals that the controversy regarding wardbandi (delimitation of wards) was carried out before the expiry of term of the Municipal Council on 20.06.2015. Thereafter, it further appears that the voter list was further revised for the purpose of Gram Panchayat elections which have since been held. The doubt that while preparing the wardbandi (delimitation of wards) and consequently, preparing the wardbandi (delimitation of wards) and grievance of the petitioner would be effectively redressed. The elections are yet to be held. We thus dispose of this writ petition with a direction to the Director, Urban Local Bodies, Haryana and the Deputy Commissioner, Jind to call for the record, hear the petitioner as well as other stake holders, consider the petitioner's objections dated 25.02.2015 and take an appropriate decision in accordance with law, well in advance before the elections of Municipal Council, Narwana are held.

Ordered accordingly.”

The Director, Urban Local Bodies, Haryana passed the order on 10.05.2016 after taking into consideration the objections filed by the petitioner. The matter did not rest here because the petitioner, in the second petition, filed CWP No.9950 of 2016 titled as **Sat Pal Vs. State of Haryana and others**, which was

disposed of by this Court on 19.05.2016, by passing the following order:

“The petitioner had earlier approached this Court through CWP No.12158 of 2015 questioning the delimitation exercise of wards of Municipal Council, Narwana. A direction was issued to the authorities to consider and decide the petitioner's objections. The Director, Urban Local Bodies, Haryana, has passed an order dated 10.05.2016 (P-11) deciding such objections. It is observed that though the total votes in Ward No.3 cannot be more than the total population of that Ward and depiction of voters more than the population is a suspicious circumstance but due to that reason alone the delimitation exercise cannot be undone as there are corrective and preventing measures that can be taken to ensure that bogus votes cannot take place in the election. We are in agreement with the view taken by the Director vide order under challenge. That apart, if the petitioner is still aggrieved, he has an alternative remedy under the statute.

With these observations, the writ petition stands disposed of.”

The writ petitioner of the second petition further filed SLP (Civil) No.23352 of 2016 before the Hon'ble Supreme Court against the order passed by this Court on 19.05.2016 in which the following order was passed on 16.08.2016 which read as under:

“The High Court has apparently declined to interfere with the matter on the ground that there is an alternative remedy in the matter of delimitation.

Inviting our reference to the Rules, the learned counsel for the petitioner submits that there is no alternative remedy.

In that view of the matter, the petitioner seeks leave to withdraw this Special Leave Petition with liberty to approach the High Court seeking disposal of the writ petition on merits.

Permission is granted with the above liberty.

The Special Leave Petition, is accordingly, dismissed as withdrawn.”

Before the Second petition could have been filed, the first petition was filed by Jagmal, who also belongs to Narwana and is also aggrieved like Satpal. The said writ petition was filed on 24.06.2016. The prayer made in the first petition is identical to the prayer made in the second petition but admittedly in this case Jagmal had not filed by objection and has rather relied upon the orders passed by this Court in the case of Satpal.

Although the writ petitioner of the second petition was granted an opportunity, as stated by the petitioner, who approached this Court again for seeking disposal of the writ petition on merits i.e. CWP No.9950 of 2016 because he had prayed before the Supreme Court that there is no other remedy available to him yet he chose to file a separate writ petition which was filed on 14.11.2016. It is also a matter of fact that the elections of the Municipal Council, Narwana were announced on 28.04.2016, held on 25.05.2016 and result was declared on 27.05.2016.

Learned counsel for the petitioner has vehemently argued that there was fraud by the official respondents in the delimitation of wards and in this regard, referred to ward Nos.2,3 and 4 in particular to contend that in the proposal of the said wards, ward No.2 was given to SC category, 3 to General category and 14 to BC category but in the final list it was altogether changed. It is also submitted that even if the writ petition has been filed after the declaration of result of the election or even the objections have not been filed by Jagmal to

the proposed wards yet they have a right to challenge the election of the private candidates on the ground of fraud and in this regard he has referred to the decision of the Supreme Court in the case of **Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh**, 2018 SCC Online SC 1636. He has also submitted that in case the election of the candidates is not to be interfered with by this Court then atleast directions may be issued as has been done in the case of **Punjab Pradesh Congress Committee Vs. State of Punjab and others** in CWP No.8290 of 2013 decided on 13.06.2013.

Learned counsel for the respondents have submitted that both the writ petitions are not maintainable. Insofar as the writ petition filed by Jagmal is concerned, it is submitted that since he did not file any objection though opportunity was available, therefore, at this stage when the elections have already been over and the candidates have been returned to their respective constituencies or the wards, the sanctity of the election cannot be disturbed. Insofar as the second petition is concerned, it is submitted that the second writ petitioner has already tried his level best in interfering with the election process by filing writ petitions one after other. The first petition was disposed of by this Court by issuing direction to the Director, Urban Local Bodies, Haryana to hear objections which were duly heard and decided by the Director of Urban Local Bodies, Haryana on 10.05.2016. The said order was further challenged by way of writ petition No.9950 of 2016 and remained unsuccessful. The order passed on 10.05.2016 has become final because the writ petition was actually decided on merits and not on technicalities. It was observed therein that if the petitioner is still aggrieved, he has an alternative remedy, which may be availed. It is further submitted that the said petitioner had filed SLP before the Supreme Court. His argument in regard to the order dated 10.05.2016 passed by the Director, Urban Local Bodies, Haryana was not tinkered with rather his whole argument was that there was no alternative

remedy with him and the petition was dismissed as withdrawn.

We have heard the learned counsel for the parties and after considering the facts and circumstances of the case, we find that there is no merit in these writ petitions.

It needs to be noticed that the delimitation of wards is regulated by the Rules. It is specifically mentioned in the Rules that there would be two stages of the delimitation of wards i.e. primary and final stage. The primary stage would be when the adhoc body would submit its proposal and the final stage would be when the said proposal is accepted or rejected by the State Government. There is no dispute that the proposal was made by the Adhoc Committee and accordingly the final list of delimitation of wards was made in terms of Rule 10 of the Rules. Thereafter, Satpal who was the writ petitioner in the second petition had been pursuing his remedy as he had also filed the petitions one after the other and reached upto the Supreme Court. His objections were ordered to be decided by this Court by the Director, Urban Local Bodies, Haryana, who had passed the order on 10.05.2016 and dismissed his objections. The said petitioner challenged the order of Director, Urban Local Bodies, Haryana and that petition was disposed of by observing that "It is observed that though the total votes in Ward No.3 cannot be more than the total population of that Ward and depiction of voters more than the population is a suspicious circumstance but due to that reason alone the delimitation exercise cannot be undone as there are corrective and preventing measures that can be taken to ensure that bogus votes cannot take place in the election. We are in agreement with the view taken by the Director vide order under challenge. That apart, if the petitioner is still aggrieved, he has an alternative remedy under the statute."

The challenge by the petitioner to the said order before the Supreme Court without any success is sufficient to hold that said order has been passed by this Court on merits and not

on technicalities. Therefore, the order of the Supreme Court by which the petitioner has been allowed to seek disposal of the writ petition on merits would also be without any substance as the order has already been passed on merit and we approve the same. We are not at present on this issue as to whether the petitioner should have filed an application for recalling of the order passed by this Court on 19.05.2016 or he has wrongly filed the writ petition since the said writ petition has been entertained by this Court but the fact remains that the order of Director, Urban Local Bodes, Haryana dated 10.05.2016 has already been approved by the Division Bench of this Court, which cannot be interfered with.

While parting, we would also like to add a few words in regard to the delimitation of wards and thus we are directing the respondents that i) the exercise of delimitation of wards for the purpose of election of the Municipal Committees, Council, and Corporations shall be undertaken with wide publicity in the electronic and print media well before the exercise is started, ii) the notification of the proposed wardbandi or its substance should not only be allowed to be pasted/affixed in terms of the provisions of the statute but should also be accompanied by a coloured site plan showing formation of separate wards so that the appropriate opportunity could be availed of by the voters for the purpose of filing objections, iii) The Competent Authority, who has to decide the objections, shall decide the objections by passing a well reasoned order reflecting his/her application of mind.

We would also like to add that the Rules are silent about the time to be given for the purposes of filing objections. Therefore, if need be, the State Government may consider for the amendment of Rules for the purpose of granting reasonable time to the objector to file their objections/suggestions in regard to the delimitation of the wards.

No other point is raised.

In view of the above, the writ petitions are dismissed

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

October 22, 2018

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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No