IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12724 of 2018 (O&M)

Date of Decision : 05.07.2018

Ashok Bhatti and others

....Petitioners

Versus

State of Haryana and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

...

Present: Mr.Shailenra Jain, Sr. Advocate with
Mr.Satyendra Chauhan, Advocate
for the petitioners.

...

MAHESH GROVER, J. (Oral)

CM-9040-CWP-2018

C.M.is allowed. Translated copy of Annexure P-9 is taken on record.

CWP No.12724 of 2018

This is a writ petition preferred by a few of the residents of Rohtak questioning the notification dated 17.04.2018 (Annexure P-10) declaring the wards for the purposes of elections in Municipal Corporation, after consideration of objections.

The petitioners' grievance is limited to violation of procedure inshrined in Rule 9 of the Haryana Municipal Corporation Delimitation of Ward Rules, 1994 (hereinafter referred to as 'the Rules'). The argument is further amplified by asserting that apart from the fact that the competent authority envisaged in Rule 9 did not hear

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the objections, there was a complete non application of mind in acceptance of the report of the Deputy Commissioner which has resulted in a delimitation of the wards contrary to the well laid down principles.

Learned counsel for the petitioners has contended that Rule 9 envisages procedure which cannot be deviated being mandatory in nature and since the Government is empowered under the said Rule to consider the objections and the same having been heard by the Commissioner, Municipal Corporation, it would nullify the entire process. To emphasise his argument he has referred to Annexure P-9, the decision leading to the final notification Annexure P-10.

We have heard the learned counsel for the petitioners.

To understand the controversy, Rule 9 as well Rule 10 are extracted herebelow :-

> "**9. Publication of proposal for delimitation of Wards –**The Government shall-
>
> (a)publish in the official Gazette the proposal for delimitation of wards received by its under rule 8, for eliciting objections or suggestions from the affected persons of the municipal area;
>
> (b) specify a date on or after which the proposal along with objections or suggestions, if any, will be considered by it;
>
> (c) consider all objections or suggestions which may be received by it before the date so specified; and
>
> (d) thereafter, by order, determine the delimitation of wards of the Municipal area.
>
> **10. Publication of final order in Official Gazette.-**After the adoption of procedure laid down in rule 9 and complying with the provisions thereof the Government shall publish its final order in

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> the Official Gazette and upon such publication such order shall have the force of law."

A perusal of the above would suggest that the Government shall publish in the official gazette the proposal for delimitation of wards received by it under Rule 8, for eliciting objections or suggestions from the affected persons of the municipal area for which purpose the date shall be specified and the objections received before the specified date, considered, whereafter the delimitation of the wards shall be determined.

There is no dispute that publication was indeed done in the official gazette with the dates specified, objections received and considered and the final notification issued.

The only cause of grievance of the petitioners is that they have not been heard by the authority empowered to do so under Rule 9 i.e. the Government.

Annexure P-1 is the notification dated 09.03.2018 issued for a proposal for delimitation of wards of Municipal Corporation, Rohtak and the relevant portion thereof for the purpose of present controversy is extracted herebelow :-

> "Notice is hereby given that the proposal will be taken into consideration by the Government on or after the expiry of period of 10 days from the date of publication of this order in the Official Gazette, together with objections and suggestion if any, which may be received by the Principal Secretary to Government Haryana, Urban Local Bodies Department/Director General, Urban Local Bodies, Haryana, Panchkula through Deputy Commissioner, Rohtak from any person in respect of the proposal before the expiry of the period so specified."

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The aforesaid needs some dilation by us as it answers most of the questions raised by the petitioners in the writ petition. It reads that notice is given that the 'proposal will' be taken into consideration by the Government on or after expiry of the period of 10 days from the date of publication of this order in the Official Gazette, together with objection and suggestion if any, which may be received by the Principal Secretary to Government Haryana, Urban Local Bodies Department/Director General, Urban Local Bodies, Haryana, Panchkula through Deputy Commissioner, Rohtak from any person in respect of the proposal before the expiry of the period so specified. It virtually lays down hierarchy through which the proposal is to be routed. We emphasise on the word 'proposal' for the reason that it does not necessarily mean that objections per se would be forwarded to the Government. It has been conceded by the petitioners that the objections were indeed heard by the Commissioner, Municipal Corporation, Rohtak and a perusal of Annexure P-7 would indicate a contribution of the Deputy Commissioner in finalising the proposal in accepting the proposals of the Municipal Commissioner qua some suggestions, while either modifying partially or rejecting some in totality.

Some of the suggestions have been dittoed by the Deputy Commissioner whereas in some he has contributed by giving his own reasons in either accepting or modifying the suggestions of the Commissioner. This indeed is reflection of the application of mind by the Deputy Commissioner to the proposal/objections received before

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the specified date and considered in terms of the notification Annexure P-9.

The petitioners' grievance that simply because they have not been heard by the Government which would nullify the whole process, seems to be unfounded for more than one reasons. Firstly, the government is to finalise the proposal and not hear the objections itself. The objections were heard by the Municipal Commissioner and further dealt with by the Deputy Commissioner to forward a proposal to the Government which then found approval upto the level of the Chief Minister. Whereafter the final notification issued. Therefore, the procedural irregularity as perceived by the petitioners does not manifest itself from the material on record.

Considering the nature of controversy we are further of the opinion that the argument of the petitioners that proposal should have been heard by the Government is impractical and illogical. The Commissioner Municipal Corporation and the Deputy Commissioner being officers at the ground level would certainly by in a position to appreciate the ground realities and the issues raised by the residents. It is, therefore, in the fitness of things that the notification mentions the word 'proposal' to be considered by the Government.

Apart from this, assuming though not accepting that the argument of the petitioners qua violation of Rule 9 is correct, even then every procedural irregularity would not nullify the whole process unless a serious prejudice has been shown. The objections have been heard by at least two officers and consequently the

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petitioners cannot make a grouse of the fact that objections have not been considered.

We, therefore, reject both the arguments raised by the petitioners.

Petition dismissed.

(MAHESH GROVER)
JUDGE

05.07.2018 (MAHABIR SINGH SINDHU)
dss JUDGE

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

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