

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

DATE OF DECISION : 9.2.2018

1. C.W.P. No.168 of 2018 (O&M)
Simarjeet Singh Bains and another v. The State of Punjab and others.
2. C.W.P. No.865 of 2018 (O&M)
Anita Kharbanda and others v. State of Punjab and others.
3. C.W.P. No.1392 of 2018 (O&M)
Gurkirpal Singh v. The State of Punjab and others.
4. C.W.P. No.2450 of 2018 (O&M)
Sonu Kalyan v. State of Punjab and others.
5. C.W.P. No.26696 of 2017
Rajnesh Mahajan v. State of Punjab and another.

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJBIR SEHRAWAT**

Present:- Ms.Ruchi Sekhri, Advocate,
Mr.Vishal Sharma, Advocate,
Shri Ramandeep Partap Singh, Advocate,
Shri Jaspal Singh, Advocate and
Shri Rahul Bhargava, Advocate for the petitioners.

Shri Atul Nanda, Advocate General, Punjab with
Shri Sandeep Vermani, Additional A.G. Punjab
Ms.Diya Sodhi, Advocate.

Shri Ashok Bajaj, Advocate.

MAHESH GROVER, J.

This order will dispose of C.W.P. Nos.168, 865, 1392, 2450 of 2018

and 26696 of 2017.

For the sake of convenience, brief facts have been taken from C.W.P. No.168 of 2018.

This petition has been filed with a prayer that the entire process of de-limitation of wards of Municipal Corporation, Ludhiana as well as Notification dated 21.12.2017 (Annexure P-1) be set aside as it is in complete violation of clause 6 of the Delimitation of Wards of Municipal Corporation Order, 1995 (hereinafter referred to as the Order).

C.W.P. No.26696 of 2017 was filed at a prior point of time with a prayer that the State be directed to notify the election to the Municipal Corporation, Ludhiana as also all Municipal Corporations in the State of Punjab since a constitutional mandate binds them to it. While hearing this petition, this Court on 5.12.2017 posed a query as to why the elections to the Municipal Corporation, Ludhiana were not being held, upon which it was given out to the Court that the work of de-limitation of wards of Municipal Corporation, Ludhiana is under way and atleast two months time would be required to complete the exercise.

The Court then bound the State to a time frame to complete the delimitation/wardbandi within 45 days from the date of passing of the order i.e. 5.12.2017 and further directed that election schedule of Municipal Corporation, Ludhiana be issued 15 days thereafter.

It is in this backdrop that the process of delimitation of wards was undertaken.

C.W.P. No.168 of 2018 was then filed questioning the process of delimitation as being contrary to the provisions of law. The notification Annexure P-1 issued under Section 8 of the Punjab Municipal Corporation Act (hereinafter referred to as the Act) and clause 6 of the Order notifying the general public that after 7 days of the publication of the notification, the objections/suggestions

submitted by the related persons to the Department of Local Government shall be considered. The wardbandi was a part of the notification dated 21.12.2017.

The principal grievance of the petitioners is that clause 6 of the Order has been violated. The same is extracted here below :-

“6. Principles for delimitation of wards of a City.-

(Section 8) – The following principles shall be observed by the Board in the delimitation of wards of a city, namely :-

- (a) All wards shall as far as practicable, be geographically compact areas, and in delimiting them, due regard shall be had to the physical features like facilities of communication and public convenience ;
- (b) Wards in which seats are reserved for the Scheduled Castes, shall be located, as far as practicable, in those areas where the proportion of their population to the total population of the City, is the largest and such seats shall be allotted by rotation to different wards in the City ;
- (c) Seats numbers reserved for women (including number of seats reserved for women, if any, belonging to Scheduled Castes) by the Government shall, be kept reserved for women, and such seats shall be allotted by rotation to different wards in the Corporation ;
- (d) Two seats reserved for Backward classes by the Government, shall be kept reserved for the Backward Classes, and such seats shall be

allotted by rotation to different wards in the Corporation ; and

- (e) Each Corporation shall be divided into two wards in such manner that the population of each ward as far as practicable, is the same throughout the Corporation, with a variation upto ten percent above or below the average population figures.
- (f) In every Municipal Corporation, the Board while drafting the Scheme for delimitation of wards, shall allot numbers to all wards having due regard to the principle of contiguity :

(Provided that the principle of rotation shall not be applicable where the delimitation or wards of a Municipal Corporation has been done under the provisions of of sub clauses (ii) of clause (4) of the order.”)

It is contended that Section 8 of the Act provides that seats shall be divided into single-member wards in such a manner that the population of each of the wards shall, so far as practicable, be the same throughout the city. Section 8 is extracted here below :-

“Section 8. Delimitation of wards.- (1) for the purposes of election of Councilors, the City shall be divided 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.

(2) The Government shall, by order in the Official Gazette,

determine the extent of each ward and the wards in which seats shall be reserved for Scheduled Castes.

The respondents when put on notice, took an objection that on 4.1.2018, a final notification determining the wards has been issued but not impugned by the petitioners.

It is pertinent to mention here that during the pendency of the petition on 30.1.2018, a notification fixing the date for election as 28.2.2018 was also issued, and the election scheduled was also notified on 8.2.2018.

Learned counsel for the petitioners contend that since the entire process leading to delimitation of wards is flawed being in violation of clause 6 of the Order and Section 8 of the Act, the subsequent process of election necessarily would also have to be negated.

The respondents, on the other hand, in view of the bar contained in Article 243ZG, took the stand that the courts are debarred from looking into the validity of any law relating to delimitation of any constituency or allotment of seats to any constituency and that no election to any Municipal Corporation can be called into question.

Article 243ZG is extracted here below :-

“243-ZG. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution,-

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA shall not be called in question in any court ;
- (b) no election to any Municipality shall be called in question except by an election petition presented to

such authority and in such manner as is provided for or under any law made by the Legislature of a State.”

We have heard the learned counsel for the parties and find that there are serious impediments in the way of the petitioners.

Firstly, even though the writ petition was filed questioning the notification dated 21.12.2017 proposing the delimitation of wards and notifying of objections, no attempt was made by the petitioners to impugn the final notification delimiting the wards. In fact, the final notification was issued on 4.1.2018 and a challenge was indeed available to the petitioners, but for some strange reasons, that has not been done even when the petition came up for preliminary hearing on 10.1.2018. This itself is sufficient to warrant dismissal of the petition.

Secondly, the notification to hold elections and a schedule thereto has been issued during the pendency of the petition and in view of the settled proposition of law, the only remedy available with the petitioners now would be to raise any dispute pertaining to election by way of an election petition.

We, however, do not agree with the contention of the learned counsel for the respondents that there would be a complete bar of judicial review on account of Article 243ZG.

The power of judicial review is vast and an inherent feature of a democratic set up. The proposed delimitation of the process leading to delimitation of wards was indeed within the purview of judicial review. But since the process stood concluded on 4.1.2018 and the petition filed without mounting a challenge to it, is a flaw and a fatality that the petitions cannot surmount.

After the issuance of this notification as also the notification prescribing the date and schedule of election, the courts would be hesitant to interfere in view of the settled proposition that an election process once set in motion, could not be interfered with. The only remedy with a person aggrieved is

to file an election petition.

In **Mohinder Singh v. Chief Election Commissioner** AIR 1978

S.C. 851, it was held as below :-

“28. What emerges from this perspicacious reasoning, if we may say so with great respect, is that any decision sought and rendered will not amount to 'calling in question' an election if it subserves the progress of the election and facilitates the completion of the election. We should not slur over the quite essential observation “Anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election”. Likewise, it is fallacious to treat 'a single step taken in furtherance of an election' as equivalent to election.

29. Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in furtherance of an election. So, the short question before us, in the light of the illumination derived from Ponnuswami, is as to whether the order for re-poll of the Chief Election Commissioner is “anything done towards the completion of the election proceeding” and whether the proceedings before the High Court felicitated the election process or halted its progress. The question immediately arises as to whether the relief sought in the writ petition by the present appellant amounted to calling in question the election. This, in turn, revolves round the point as to whether the cancellation of the poll and

the reordering of fresh poll is 'part of election' and challenging it is 'calling it in question'.

30. The plenary bar of Article 329(b) rests on two principles : (1) The peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion. (2) The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution. Durga Shankar Mehta (supra) has affirmed this position and supplemented it by holding that, once the Election Tribunal has decided, the prohibition is extinguished and the Supreme Court's overall power to interfere under Article 136 springs into action. In Hari Vishnu (supra) this Court upheld the rule in Ponnuswami excluding any proceeding, including one under Article 226, during the ongoing process of election, understood in the comprehensive sense of notification down to declaration. Beyond the declaration comes the election petition, but beyond the decision of the Tribunal the ban of Article 329(b) does not bind.

31. If 'election' bears the larger connotation, if 'calling in question' possesses a semantic sweep in plain English, if policy and principle are tools for interpretation of statutes, language permitting, the conclusion is irresistible, even

though the argument contra may have emotional impact and ingenious appeal, that the catch-all jurisdiction under Article 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll. For, the prima facie purpose of such a re-poll was to restore a detailed poll process and to complete it through the salvatory effort of a re-poll. whether, in fact or law, the order is validly made within his powers or violative of natural justice can be examined later by the appointed instrumentality, viz., the Election Tribunal. That aspect will be explained presently. We proceed on the footing that re-poll in one polling station or in many polling stations, or good reasons, is lawful. This shows that re-poll in many or all segments, all-pervasive or isolated, can be lawful. We are not concerned only to say that if the regular poll, for some reason, has failed to reach the goal of choosing by plurality the returned candidate and to achieve this object a fresh poll (now a new election) is needed, it may still be a step in the election. The deliverance of Dunkirk is part of the strategy of counter attack. Wise or valid, is another matter.

32. On the assumption, but leaving the question of the validity of the direction for re-poll open for determination by the Election Tribunal, we hold that a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in 'election' and is therefore, barred by Article 329(b). If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would

have then thwarted the course of the election and different considerations would have come into play. We need not chase a hypothetical case.”

The distinction between the process leading to election and the initiation of election process has been well crafted in the Full Bench decision in **Mohinder Singh's** case (supra) which is also a complete answer to Article 243ZG and its scope. The same has also been elaborately dealt with in a Full Bench decision rendered by this Court in **Prithvi Raj v. State Election Commission, Punjab** and others 2007(3) R.C.R. (Civil) 817.

Consequently, in view of the Full Bench pronouncements in **Prithvi Raj's** case (supra) and for the reasons stated above, we do not find any merit in the petitions and the same are dismissed.

(MAHESH GROVER)
JUDGE

(RAJBIR SEHRAWAT)
JUDGE

February 9, 2018
GD

Whether speaking/reasoned	Yes
Whether reportable	Yes/No