

(Proceedings through V.C.)

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

1. CWP No.20082 of 2020

Rinka Puri and others ...Petitioners

Versus

Union of India and others ... Respondents

**2. CM No.13165 of 2020 in/and
CWP No.20636 of 2020 (O&M)**

Bachan Singh and another ...Petitioners

Versus

State of Punjab and others ... Respondents

Date of Decision: 16 .12.2020

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr.Sunil Chadha, Sr.Advocate with
Mr.Akshay Chadha, Advocate
for petitioners in CWP No.20082 of 2020

Mr.Chetan Mittal, Sr.Advocate with
Mr.Kunal Mulwani, Advocate
For petitioners in CWP No.20636 of 2020

Mr.Satya Pal Jain, Additional Solicitor General of India with
Ms.Shweta Nahata, Advocate
For respondents no.1 and 2 in CWP No.20082 of 2020

Mr.S.P.S.Tinna, Additional Advocate General, Punjab with
Ms.Malvika Singh, AAG, Punjab
for respondent no. 4 in CWP No.20636 of 2020
and respondents no.3 to 5 in CWP No.20082 of 2020

Mr.Satwant Singh Rangi, Advocate
for applicant in CM No.13165/2020 in
CWP No.20636 of 2020

ASHOK KUMAR VERMA, J.

1. This order will dispose of CWP Nos.20082 and 20636 of 2020 as common questions of law and facts are involved in both the writ petitions.

2. The petitioners have approached this Court through these writ petitions invoking extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India praying for issuance of writ in the nature of Certiorari for quashing the final notification made under the provisions of the Delimitation of Wards of Municipal Corporation Order 1995 (for short “1995 Order”).

Brief Facts in CWP No.20082 of 2020

3. Since the elections/bye elections to the Municipal Corporations/Municipal Councils/Nagar Panchayats in the State of Punjab have been impending, the State of Punjab issued a draft Notification dated 7.9.2020 (Annexure P-11) under the provisions of 1995 Order inviting objections/suggestions within 7 days with regard to zoning of wards of Municipal Corporation of Pathankot. Pursuant to the aforesaid Notification, the Commissioner, Municipal Corporation, Pathankot issued public notice dated 12.9.2020 (Annexure P-12) inviting objections by 18.9.2020 with

regard to fresh delimitation of the Municipal Corporation, Pathankot. The State of Punjab constituted a Delimitation Board. The petitioners submitted their objections vide Annexure P-13 (Colly.). After submission of the objections by the petitioners, they approached this Court by filing CWP No.17422 of 2020 with a grievance that their objections have not been considered and the same be considered prior to the finalization of the Notification under Clause 8(2) of the 1995 Order. While disposing of the said writ petition vide order dated 16.10.2020, this Court directed the competent authority to consider the objections of the petitioners prior to passing of the final order under Clause 8 (2) of the 1995 Order. The official respondents issued the final Notification dated 5.11.2020 vide Annexure P-14.

Brief Facts in CWP No.20636 of 2020

4. The State of Punjab issued a draft Notification dated 23.10.2020 (Annexure P-4) under Clause 8 of the 1995 Order inviting objections/suggestions within 7 days with regard to zoning of wards of Municipal Corporation of SAS Nagar. The State of Punjab constituted a Delimitation Board consisting of seven Members vide Notification dated 31.7.2020 (Annexure P-6). The petitioners submitted their objections dated 29.10.2020 vide Annexures P-7, P-8 etc. The official respondents issued the impugned final Notification dated 5.11.2020 vide Annexure P-9.

5. The objections raised by the petitioners were with regard to re-determination of some elected members of Delimitation Board, delimitation of Wards, reservation of wards for Scheduled castes, Backward Classes, women, SC Women, de-reservation of wards for General Category etc.

6. The respondents have filed their replies to both the writ petitions wherein it is their stand that process for conducting general/bye elections of the Municipal Corporations of Pathankot and SAS Nagar Mohali etc. has started vide Notification dated 27.11.2020. Vide Notification dated 1.12.2020, the State Election Commission, Punjab has also notified the programme for holding the general/bye elections of the Municipal Corporations, Municipal Councils and Nagar Panchayats as under:-

<i>“1.Preparation of Electoral Rolls upto</i>	<i>9.12.2020</i>
<i>2.Draft publication of electoral rolls</i>	<i>10.12.2020</i>
<i>3.Last date for filing claims & objections</i>	<i>16.12.2020</i>
<i>4.Disposal of claims and objections by</i>	<i>23.12.2020</i>
<i>5.Final publication of Electoral rolls on</i>	<i>5.1.2021.”</i>

7. It is further stated that the process of delimitation of wards of Municipal Corporation, SAS Nagar had been carried out in compliance with the provisions of Clause 8 of the 1995 Order and the detailed and comprehensive survey of population was also carried out. Thereafter, the respondent-State published the draft notification regarding reservation of wards on 23.10.2020 (Annexures P-3 and P-4), for Municipal Corporation, SAS Nagar wherein objections/suggestions were also invited for which the last date of receiving such objections was 1.11.2020. It is stated that the objections raised by the petitioners were duly sent to the competent authority for consideration and upon such consideration, subsequently the final scheme of delimitation of wards has been notified and published vide the impugned notification.

8. Mr.Sunil Chadha, learned Sr. Counsel appearing for the petitioners in CWP No.20082 of 2020 as also Mr.Chetan Mittal, learned

Sr.Counsel appearing for the petitioners in CWP No.20636 of 2020, inter alia, have vehemently contended that the impugned final Notification cannot be sustained as the same has been issued without passing a speaking order on the objections of the petitioners which is in violation of Clause 8 (2) of the 1995 Order. It has been vehemently contended that since the action of the respondents is against the principle of natural justice, as such this Court has power of judicial review to examine the action of the respondents.

9. It has been strenuously argued by Mr.Chetan Mittal, learned Sr.Counsel that as per Clause 8(2), the respondents are bound to consider the objections made by the petitioners. In Clause 8 (2), the word “considering” means the active application of mind which should be reflected in the order passed by the authority on the objections of the petitioners. In the present case, the respondents have not considered the objections of the petitioners by passing a speaking order.

10. Learned Sr. Counsel further contended that there is sheer violation of principle of natural justice as the petitioners have not been afforded any opportunity of hearing. Even objections have not been decided by passing a speaking order. Thus, the action of the respondents is against the principle of natural justice. In support of their submissions, reliance has been placed on these judgments:- (i) Kushal Chand vs. The State of Rajasthan, 1986 SCC Online Raj 49; (ii) State of M.P. and another vs. Sushri Manorama Gour, 2005 (2) MPHT 108 (FB); (iii) Prithvi Raj vs. State Election Commission and others, AIR 2007 P&H 178; (iv) Bhikhubhai Vithalbhai Patel vs. State of Gujarat and another, (2008) 4 SCC 144; (v) Kranti Associates Pvt. Ltd. and anr. vs. Masood Ahmed Khan and others, 2010 (9) SCC 496 (vi) Dr.Sushant Deshta vs. State of H.P. and others, 2017

(1) SimLC 15 (vii) Punjab Pradesh Congress Committee vs. State of Punjab and others, 2013 RCR (Civil) 1023; (viii) Jagmal vs. State of Haryana, 2019 (1) PLR 298; (ix) State of H.P. & another vs. Dr.Sushant Deshta and others (LPA No.11 of 2017 decided on 3.5.2017).

11. Mr. S.P.S.Tinna, learned counsel for the State of Punjab has vehemently controverted the submissions of the learned Sr. Counsel for the petitioners. Mr.Tinna has argued that the writ petitions of the petitioners are not maintainable, in view of the bar imposed under Article 243 ZG of the Constitution of India.

12. Learned counsel for the State has further argued that the programme for elections has already been notified. Thus, the election process having commenced, the writ petitions challenging the notification regarding redetermination of number of elected members and reservation of wards for Scheduled Castes, Backward Classes, Women etc. cannot be entertained in view of bar imposed by Article 243 ZG of the Constitution of India.

13. Learned counsel for the State has vehemently opposed the submission of the petitioners that they have not been heard and there is violation of principles of natural justice. Learned counsel submits that the objections of the petitioners have been duly considered by the respondents. He has taken us to the record which has been produced in Court. He, therefore, argues that there is no violation of the principles of natural justice. He further argues that there is no provision in the rules that the petitioners should be given an opportunity of personal hearing. In support of this submissions, learned counsel relies on Lakshmi Charan Sen and others vs. AKM Hassan Uzzaman and others, AIR 1985 SC 1233, Anugrah Narain

Singh and another vs. State of UP and others (1996) 6 SCC 303, Pran Nath Bhatia and others vs. State of Punjab and others, AIR 1997 (P&H) 309, Baldev Raj vs. State of Punjab and others, (2009) ILR 1 (P&H) 355, Sat Paul Goyal vs. UT of Chandigarh and others, AIR 2017 P&H 29.

14. We have given our thoughtful consideration to the submissions made by learned counsel for the parties and perused the paper-book as also the records which have been produced by the learned counsel for the State of Punjab.

15. We do not find any merit on the submission of the learned Sr. Counsel for the petitioners that there is sheer violation of principles of natural justice. Before proceeding further, it would be proper to reproduce the relevant Clause 8 of the 1995 Order which reads as under:-

“8. Publication of scheme for delimitation of wards. [Section 8]

- (1) The Government shall, -

(a) publish in the official Gazette the scheme for the delimitation of the wards received by it under clause 7 for inviting objections or suggestions from the affected persons of the City;

(b) specify a date on or after which the scheme along with objections or suggestions, if any, shall be considered by it; and

(c) consider all objections and suggestions, which may have been received by it before the specified date;

(2) The Government after considering the objections and suggestions under sub-clause (1), shall make its final order and shall get the same published in the Official Gazette.

(Emphasis supplied)

[Provided that before the start of election process, the State Government, may, for good and sufficient reasons, to be recorded in writing, review the order made in the form of final notification after inviting objections and suggestions in writing from the public through the public notices in two newspapers having circulation in the locality in respect of all or any of the Ward. After considering such objections or suggestions, the State Government may supersede the previous orders in the form of final notification directly or after obtaining the opinion of the Boards.]

16. From the perusal of Clause 8 of the 1995 Order, it is apparent that it does not talk of providing personal hearing with regard to the objections. State of UP and others vs. Pradhan Sangh Kshettra Samiti & Ors, AIR 1995 SC 1512 was a case of shifting of the area of one Gram Panchayat to another and in that context, the Hon'ble Apex Court held that opportunity of personal hearing was required to be given since the change in areas of local bodies result in civil consequences. In the present case, wards of outside the municipality have not been included. It is a case of re-determination of number of elected members of Delimitation Board, delimitation of wards, reservation of wards for Scheduled Castes, Backward Classes, Women, SC Women, de-reservation of wards for General Category etc. for which objections and suggestions were invited and after considering the objections and suggestions, final order of delimitation of wards was published. In S.N.Mukherji vs. Union of India, AIR 1990 SC 1984, the Hon'ble Supreme Court extensively considered the principles which would govern exercise of a particular power by an administrative authority

including exercise of judicial or quasi judicial functions. In this behalf the Apex Court had observed thus:

“35. ...In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi- judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.....”

17. Learned counsel for the State has rightly contended that there is no violation of the principles of natural justice as the objections raised by the petitioners have been duly considered by the respondents. Learned State counsel has taken us to the relevant pages of the record. From the perusal of the record produced by the counsel for the State, we find that not only the objections of the petitioners, but the objections raised by other people have also been considered. 29 objections have been raised by different people including the petitioners in Pathankot and 42 objections in SAS Nagar Mohali which have been duly dealt with and considered by the respondents.

18. In CWP No.20082 of 2020, Petitioner no.1-Rinka Puri including one Sudha Singh alongwith others filed objections (Annexure P-13) with regard to the draft notification. In the objections (Annexure P-13),

they stated that they were the residents of Ward No.20, which is going to be changed to Ward No.12. Some portion of the ward has been made to join with ward no.11 which is not justified. The ward has been reserved for Scheduled Caste whereas the population of Scheduled Caste is quite less. The respondents have taken decision on these objections which is apparent from the record produced by them. The decision of Commissioner, M.C. Pathankot on the objections (Annexure P-13 Colly.) is duly reflected at Sr.No.14 of the letter no.948 dated 22.9.2020. Keeping in view the rules, the Delimitation Board has prepared the new wardbandi. It is, but natural that there may be some variation in the ward numbering, constitution and geographical location at the time of new wardbandi. It is also pertinent to mention here that in order to fulfil the criteria of specified population, some portion of an area of other wards is also included. As far as the matter regarding reservation for scheduled caste members is concerned, as per rules, only those wards are reserved for scheduled caste members of which the population is more than the population of other wards. Therefore, the objections raised by the objectors were found to be not acceptable.

Petitioner no.2-Vishav Nath filed objection dated 17.9.2020 (Annexure P-13 Colly.). Petitioner no.2 raised objections with regard to de-reservation of ward no.27 which has been made open to General Category candidate and ward nos.27 to 24 have been changed from 'SC' (Reserve) to General Category. The population of ward has not been taken into consideration while dereserving the ward from 'SC' (Reserve) to General category. It has been requested in the objections that Ward No.27 (now 24) be made reserved for Scheduled Caste Category candidate as more than 65% of the total population of this ward belongs to scheduled caste category. The

respondents dealt with these objections also which is reflected in the aforesaid decision at Sr.No.16. The respondents decided that keeping in view the rules, the Delimitation Board has prepared the new wardbandi. As far as the matter regarding change of numbering i.e. from ward no.27 to ward no.24 is concerned, the numbering gets changed so as to maintain the continuity of the wards including geographical condition. It is but natural that some variations occur in the constitution of some wards at the time of new wardbandi because of the requirement of fulfilling the specified formula relating to the population, sometimes some portions are included/added in other wards. Because of this, the reservation of the wards changes. In this view of the matter, the objections raised by the objectors are not acceptable.

Petitioner no.3 Nirmal Singh filed objections dated 18.9.2020 (Annexure P-13 Colly.). He has raised objection that the new ward no.47 which has most of the areas comprised in old ward no.1 which was reserved for 'BC'. The boundaries of the ward have been illegally stretched beyond the geographically contiguous areas crossing National Highway and a distance or more than 3 Kms. For no reason the railway line has been crossed alongwith the UBDC Canal and in the new ward, there is no contiguity. Still the area has majority population as 'BC' and the same should be designated as 'BC' reserved. Moreover *Bahadur Lari* which was earlier part of wards and contiguous, has been taken out, which is illegal. In response to these objections, the respondent decided which is reflected at Sr.No.21 of the aforesaid decision, that keeping in view the rules, the Delimitation Board has prepared the fresh wardbandi. As far as the 'BC' ward is concerned, in this regard it is stated that in the Municipal Corporations, the population of those two wards which have more population

of 'BC' in comparison to other wards are reserved for 'BC'. Therefore, the objections raised by the objectors were found to be not acceptable by the respondents.

Petitioner no.4-Roshan Lal filed objections dated 18.9.2020 (Annexure P-13 Colly.) wherein he stated that Ward No.24 has been made as Ward No.14. This ward is comprised of Gandhi Mohalla and Rampura Mohalla and now as per the new delimitation of wards, this ward has about 1900 voters, out of which 1100 belong to Scheduled Caste and 500 belong to Backward Class. The petitioner no.4 requested that after doing the correct counting, the said ward be kept reserved for Scheduled Caste. In response to these objections, the respondents took a decision which is reflected at Sr.No.15 of the aforesaid decision that keeping in view the rules, the Delimitation Board has prepared the new wardbandi. As far as the matter regarding reservation for scheduled caste members is concerned, as per rules, only those wards are reserved for scheduled caste members where the population is more than the population of other wards. Therefore, the objections raised by the objectors were found to be not acceptable.

Petitioner no.5-Shamsher Singh filed objections dated 18.9.2020 (Annexure P-13 Colly.) wherein he stated that unnecessary variance has been created deliberately while creating ward 21. More than 700 votes has been added from the adjoining ward no.14, thus, this ward is going to have around 3200 votes whereas the ward no.14 has around 2000 votes. Though ward no.14 and 21 are absolutely contiguous, however, the numbers have been assigned according to the whims and fancies. Moreover the railway line has been crossed to add more votes which is against the rules. In response to these objections, the respondents took a decision which

is reflected at Sr.No.13 of the aforesaid decision that keeping in view the rules, the Delimitation Board has prepared the new wardbandi. As far as the matter regarding population is concerned, the wards have been constituted keeping in view the formula of specified population mentioned in the rules and accordingly, railway lines etc. have been crossed. As such, the objections raised by the objectors were found to be not acceptable.

Petitioner no.6-Rahul Saini filed objections dated 17.9.2020 (Annexure P-13 Colly.). It has been objected that earlier their ward was general, but now after new delimitation of wards, the ward has been reserved for scheduled caste women. Now, their new ward number is 27 which comprises of Mohalla Friends Colony, Nag Mandir Colony, Sunder Nagar. Therefore, in this whole ward, the population of Scheduled Castes is almost negligible and people of general ward have a strong objection that our ward has been reserved for scheduled caste women. It has been requested that their ward be changed to General. The respondents took decision on these objections which are reflected at Sr.No.10 of the aforesaid decision that keeping in view the rules, the Delimitation Board has prepared the new wardbandi. Only those wards are reserved for 'SC' where there is maximum population of 'SC'. As per rules, the ward in which taank number (odd number) comes, only that ward is reserved for female members. As such, the objections raised by the objector were found to be not acceptable.

19. Likewise in CWP No.20636 of 2020, petitioner no.1-Bachan Singh filed objections dated 29.10.2020 (Annexure P-7) wherein he raised certain objections alleging that constitution of Delimitation Board is illegal as the nomination of two members have been nominated wrongly by the Government. He raised objection with regard to change of ward no.1 to ward

no.48. There is sudden surge of 'SC' population shown in the new proposed ward no.49. Although no specific decision has been taken on the objections of petitioner no.1-Bachan Singh, but from a perusal of the decisions taken by the respondents on 3.11.2020, it is apparent that the respondents have taken decision on number of objections raised by different people from Sr.Nos.1 to 42 wherein the respondents have also taken decision with regard to the objections of petitioner no.1 also in some way or the other which have all been rejected by the respondents.

Petitioner no.2-Sukhdev Singh filed objections dated 29.10.2020 (Annexure P-8) wherein he stated that his ward no.45 has been changed to ward no.34. From this ward, 521 votes of Ivory tower have been taken out and put in ward no.33 which is within the abadi of village Sohana and 500 votes of village Sohana have been put in Ward No.34 which is an Urban Ward. Meaning thereby that votes of city have been transferred to the village and votes of village have been transferred to city. It has been requested that from ward no.34, the area which has been taken out from Village Sohana like stadium to Gurdwara Singh Sahindan to Landra road till street Parminder till street pond and till street Guljar area approximately 500 votes be taken out and the same be restricted till the old Sector 70 where the votes are 4000 to 4500 and the area of Sector 70 i.e. Ivory Town which has been connected with the rural area, the same may be kept in ward no.34.

In response to the aforesaid objections raised by petitioner no.2, the respondents decided which is reflected at Sr.No.36 of the decision taken by the respondents dated 3.11.2020 that the members of the Delimitation Board have been nominated by the Government. The Government has included the member in the Delimitation Board. The recommendation

regarding the wardbandi has been given keeping in view the rules, instructions of the government and after conducting a survey of the population with the object of maintaining balance of population in each ward. Therefore, these objections have been found to be unacceptable.

20. In sum and substance, the respondents, while dealing with the objections of the petitioners, observed that the new wardbandi has been made by the Delimitation Board as per delimitation rules. In the wardbandi so prepared, the ward, with the maximum population of scheduled caste members, has been reserved for scheduled caste. As per the Wardbandi rules, the wards having *Taank Nos (odd numbers)* have been reserved for female members. With regard to nomination of members of Delimitation Board, the respondents observed that it is within the domain of the State Government which has taken decision to nominate members of the Delimitation Board in its wisdom. As such, the respondents rejected the objections filed by the petitioners. Thus, it cannot be said that the respondents have not given effective consideration on the objections raised by the petitioners. Apart from this, the learned State counsel has taken us to the record regarding following the due process of the scheme of delimitation. He has taken us to the documents such as the collection of population data by conducting door to door survey showing the population of General, 'SC' and 'BC' categories, the duty chart of the officials of the respondents who conducted door to door survey, ward wise statement of the year 2020; Diary Register showing the entry of the objections of the petitioners and others. From the perusal of the record, we find that all the objections raised by the petitioners were duly considered and after proper consideration thereon, the

final notification has been issued. Therefore, it cannot be said that the objections were dealt with in a casual and perfunctory manner.

21. Learned counsel for the State has laid much emphasis on his contention that both the writ petitions are not maintainable in as much as election process has commenced vide Notifications dated 27.11.2020 and 1.12.2020 issued by the State Election Commission notifying the programme holding the general/bye elections of the Municipal Corporations, Municipal Councils and Nagar Panchayats. Learned counsel has rightly contended that there is express bar imposed by Article 243-ZG which is reproduced as under:-

“243ZG. 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 243ZA 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 by or under any law made by the Legislature of a State”

22. Article 243-ZG clearly lays down bar to the interference by Courts of law in electoral matters and 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 243ZA shall not be called in question in any court and even 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 by or under any law made by the Legislature of a State. The issue is no longer *res integra*. While considering this aspect, the Hon'ble Apex Court in Anugrah Narain Singh's case (supra) has held as under:-

“24.The validity of Sections 6-A, 31, 32 and 33 of the UP Act dealing with delimitation of wards cannot be questioned in a court of law because of the express bar imposed by Article 243ZG of the Constitution. Section 7 contains rules for allotment of seats to the Scheduled Castes, the Scheduled Tribes and the Backward Class people. The validity of that Section cannot also be challenged. That apart, in the instant case, when the delimitation of the wards was made, such delimitation was not challenged on the ground of colourable exercise of power or on any other ground of arbitrariness. Any such challenge should have been made as soon as the final order was published in the Gazette after objections to the draft order were considered and not after the notification for holding of the elections was issued. As pointed out in Lakshmi Charan Sen's Case, that the fact that certain claims and objections had not been disposed of before the final order was passed, cannot arrest the process of election.”

23. While considering the impact of Article 243ZG (b) of the Constitution, a Full Bench of this Court in Prithvi Raj's case, supra has held as under:-

“27. An "election", under the Municipal Act, commences with the issuance of a notification, by the State Government, under

Section 13-A(2) of the Municipal Act. The election is thereafter held by the State Election Commission. The 'election' concludes, as provided in the aforementioned statutory provision, with the declaration of the result. Thus, a petition that "calls into question" an "election", during the period of the "election", would not be entertained, under Article 226 of the Constitution of India. Redress to any such grievance, would have to await the outcome of the election and then also would be urged, by filing an election petition, under the provisions of the Election Commission Act.

33. An appraisal of the provisions of Article 226 of the Constitution, and the judgments of the Hon'ble Supreme Court, as noticed herein above, in our considered opinion, clearly postulate that once the electoral process commences, with the issuance of a notification, under the Municipal Act, any grievance, touching upon an "election" would be justiciable, only by way of an election petition. Interference by Courts in election matters, after the commencement of the election process, would not be permissible, except to the limited extent noticed herein above."

24. The scope of interference in such type of matters while exercising the writ jurisdiction was also considered by a Constitution Bench of the Supreme Court in Meghraj Kothari v. Delimitation Commission and others, AIR 1967 SC 669 wherein prayer was for quashing the notification issued in pursuance of sub section (1) of S. 10 of the Delimitation Commission Act, 1962, in respect of delimitation of certain Parliamentary

and Assembly constituencies in the State of Madhya Pradesh. The said petition was dismissed on the ground that under Article 329(a) of the Constitution, the said notification could not be questioned in any court. The question was further considered by the Hon'ble Apex Court in Pradhan Sangh Kshettra Samiti & Ors (supra) with regard to the elections to the Panchayats in Uttar Pradesh wherein it was held 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....”

25. Keeping in view, the aforesaid ratio of law laid down by the Hon'ble Apex Court and followed by the Full Bench of this Court, we are of the considered opinion that both the writ petitions are not maintainable in as much as election process has commenced vide Notifications dated 27.11.2020 and 1.12.2020 issued by the State Election Commission notifying the programme holding the general/bye elections of the Municipal Corporations, Municipal Councils and Nagar Panchayats. As reproduced above, the date for preparation of electoral rolls is upto 9.12.2020, draft of publication of electoral rolls is by 10.12.2020, last date for filing claims and objections and disposal of the same are 16.12.2020 and 23.12.2020 respectively. Final publication of electoral rolls is on 5.1.2021. Intervention of this Court, in exercise of writ jurisdiction under Article 226 of the Constitution at this stage, which may even remotely suggest the stalling of elections, is improper. The object and purport of introduction of Chapter IX-A in the Constitution of India by the 74th Constitutional Amendment 1992 was/is to facilitate the conduct of elections without putting any

hindrance and taboo which is the fundamental requirement of democracy. Election to the local bodies is the grass root of democracy which is a process by which much decision-making authority is shifted to the lowest geographic and social levels. Any action of the Court or any individual which may, by any means, hamper or obstruct the democratic process is anti thesis to the spirit of these constitutional provisions.

26. The principles of natural justice are not embodied rules and they cannot be imprisoned within the strait-jacket of a rigid formula. The requirements of natural justice depend on the circumstances of each case, the nature of the enquiry, the rules under which the official respondents are acting, the subject matter being dealt with and so forth. In the present case, scheme and policy for delimitation of wards has been framed under the statute, right to file objections and suggestions has been given to the residents of the Municipal areas. After consideration of the objections, final notification has been made. In this view of the matter, principles of natural justice would not require personal hearing to be given especially when all relevant circumstances were taken into consideration before issuing final notification of delimitation of wards.

27. In such matters, the scope of judicial review is very limited. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. We find no arbitrariness, irrationality, unreasonableness, bias and mala fide in the action of the respondents. This court will not interfere with the action of the respondents and the letters/final notifications impugned in both the writ petitions.

28. Consequently, we find no merit in both the writ petitions and the same are hereby dismissed with no order as to costs.

29. Consequent upon the dismissal of the writ petitions, CM No.13165 of 2020 moved by Mr.Rangi, learned counsel, for impleadment of his clients as respondents no.5 and 6 in CWP No.20636 of 2020 is rendered infructuous and is dismissed as such.

(ASHOK KUMAR VERMA)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

16.12.2020
MFK

Whether speaking/reasoned

Whether Reportable

Yes

Yes