

(101)

(Proceedings through Video Conferencing/WhatsApp)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 25 .1.2021

1. CWP No.11619 of 2020

Kulwinder Singh ...Petitioner

Versus

Union of India and others ...Respondents

2. CWP No.12143 of 2020

Makhan Singh ...Petitioner

Versus

Union of India and others ...Respondents

3. CWP No.13143 of 2020 (O & M)

Shiv Kumar Sood and others ...Petitioners

Versus

Union of India and others ...Respondents

4. CWP No.13151 of 2020

Ashok Kumar Sofat ...Petitioner

Versus

Union of India and others ...Respondents

5. CWP No.13560 of 2020 (O & M)

Barjinder Singh Brar ...Petitioner

Versus

Union of India and others ...Respondents

6. CWP No.14353 of 2020 (O & M)

Pawan Kumar and another ...Petitioners

Versus

State of Punjab and others ...Respondents

7. CWP No.16979 of 2020 (O & M)

Manvinder Pal Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

8. CWP No.14804 of 2020

Rajvinder Singh Sidhu ...Petitioner

Versus

Union of India and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Gaurav Rana, Advocate
for the petitioner(s) in CWP-11619-2020.

Mr. Harsh Chopra, Advocate
for the petitioner(s) in CWP-12143-2020.

Mr. Krishan Singh Dadwal, Advocate
for the petitioner(s) in CWP-13143 and 14804-2020.

Mr. Ferry Sofat, Advocate
for the petitioner(s) in CWP-13151-2020.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Shiv Kumar Sharma, Advocate
for the petitioner(s) in CWP-13560-2020.

Mr. Sanjiv Gupta, Advocate
for the petitioner(s) in CWP-16979 and 14353-2020.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Ms. Shweta Nahata, Advocate for the respondent(s)-UOI.

Mr. S.P.S. Tinna, Addl. A.G. Punjab.

Ms. Anu Chatrath, Sr. Advocate with
Mr. Amarpreet Singh Bains, Mr. Nitin Arora, Mr. Nishant
Maini, Advocates for the respondent No. 5 in CWP Nos.
14353, 11619, 13560 -2020, for Respondent Nos. 5 and 6 in
CWP Nos. 13151 and 12143-2020.

ASHOK KUMAR VERMA, J.

1. This order will dispose of CWP Nos.11619, 12143, 13143, 13151, 13560, 14353, 16979 and 14804 of 2020 as common questions of law and facts are involved in all the connected writ petitions. For the sake of brevity and convenience, the facts are being taken from CWP No. 11619 of 2020.

CWP Nos.11619, 12143, 13151, 13560, 14353 of 2020

2. In sum and substance, the petitioners have approached this Court through these writ petitions challenging the final notification dated 14.07.2020 issued by Department of Local Government, State of Punjab whereby the Delimitation Board has been constituted for the purpose of delimitation of wards of Municipal Councils of Zirakpur, Nawanshahr, Gobindgarh, District Fatehgarh Sahib, Moga and Lalru Tehsil Dera Bassi District S.A.S. Nagar (Mohali). However, this challenge has been given up by learned counsel for the petitioner(s) which is reflected from the order dated 18.9.2020 passed by this Court in this lead case i.e. CWP No.11619 of 2020 alongwith some other connected writ petitions. There

is also a challenge to the notification dated 28.07.2020 (Annexure P-9), a proposed new ward notification of Municipal Councils/Corporations based on the delimitation inviting objections, has been published and there is also a challenge to the public notice (Annexure P-10), whereby the last date for receipt of objections to the draft notification (Annexure P-9) has been notified. There is also a challenge to the notification dated 21.11.2019 (Annexure P-4) in almost all the connected writ petitions, whereby the administrative boundaries of all the districts, tehsils, towns, villages, wards etc. in the State of Punjab shall stand frozen w.e.f. 01.01.2020 to 31.03.2021 as per the provisions of Census Rules, 1990 (Rules 8.iv) to the Census Act, 1948 as also all the pending proposals, if any, affecting changes in the existing boundaries of towns, revenue villages, tehsils, Community Development Blocks and Districts may, therefore, be finalized on or before 31st December, 2019 under intimation to the Director, Census Operation, Punjab, Chandigarh.

CWP No.13143 of 2020

3. Through this petition, the petitioners have challenged letter dated 24.7.2020 (Annexure P-9) whereby delimitation of wards scheme has been prepared and the letter dated 28.7.2020 (Annexure P-10) changing the period of freezing of the boundaries, letter dated 4.8.2020 (Annexure P-13) whereby the Committee has been constituted for the purpose of re-cast of boundaries/areas of the wards in Municipal Corporation, Hoshiarpur and the notification dated 18.8.2020 (Annexure P-15) which is said to be issued in violation of the letter dated 6.9.2019 (Annexure P-3) issued by Registrar General of Census Commissioner,

India (respondent No.2). There is further prayer for a direction to the respondents to act upon the letter dated 6.9.2019 (Annexure P-3) as well as resolution unanimously passed by the Municipal Corporation dated 09.3.2020 (Annexure P-6) and further to conduct the coming elections as per the delimitation of wards which has already taken place on 27.11.2014 (Annexure P-1).

CWP No.16979 of 2020

4. In this petition, there is a challenge to the impugned notification dated 2.9.2020 (Annexure P-9) and communication dated 14.9.2020 (Annexure P-10) whereby the Delimitation Board has been constituted for delimitation of wards of Municipal Council, Derabassi, District S.A.S. Nagar.

CWP No.14804 of 2020

5. In this petition, there is a challenge to the preparation of Delimitation of Wards Scheme in Municipal Corporation, Bathinda as well as all other actions and steps undertaken by the respondents No.5 and 6 for the change of earlier delimitation of ward dated 23.12.2014 (Annexure P-1) as well as reservation in wards, letter dated 28.7.2020 (Annexure P-6) issued by respondent No.2 including the notification dated 18.8.2020 (Annexure P-7) issued by respondent No.3 and further to quash the draft notification dated 7.9.2020 (Annexure P-8).

6. Learned counsel for the petitioners have, *inter alia*, made the following submissions:-

i) It has been argued that there is violation of principle of natural justice on the part of the official respondents. It is submitted that

the official respondents have not considered and decided the objections of the petitioners and in some cases legal notice(s)/representation(s) have not been considered by the official respondents. Furthermore, the petitioners have not been granted opportunity of personal hearing by the official respondents.

ii) Vide notification dated 21.11.2019 (Annexure P-4), the Government of Punjab issued directions to freeze administrative boundaries of all the districts, tehsils, towns, villages, wards etc. w.e.f. 01.01.2020 to 31.3.2021. When the said notification was in operation, it notified the constitution of Delimitation Board on 14.7.2020 and a draft scheme was prepared on 28.7.2020 while the notification dated 21.11.2019 was still in operation. The notification superseded previous notification dated 21.11.2019 only with effect from the date when it was in force i.e. 18.8.2020 and does not nullify the actions qua delimitations which were undertaken by the official respondents, in view of the notification dated 21.11.2019.

iii) It has been further argued by the learned counsel for the petitioners that the official respondents whimsically granted only seven days time which included three days of public holidays, to file objections to the draft scheme. Further, Rule 8 of the Delimitation of Wards of Municipalities Rules 1972 (for short “1972 Rules”) provides calling of objections from the aggrieved persons, which also does not prescribe any time limit. As such general rules i.e. Rule 12 of the Punjab Municipal General Rules, 1979 (for short ‘1979 General Rules’) would attract

wherein it is provided that the Municipal Council is required to give a minimum of 30 days time to file objections/suggestions.

iv) It has been further argued that the Delimitation Board acted arbitrarily and whimsically as the delimitation of the Wards was completed by the Board haphazardly in a single meeting, without minutely assessing the population of the Wards, the facilities in the Wards, which are the requirements, whereas the Board is supposed to follow the rules of delimitation as prescribed under Rules 4, 6 & 8 of 1972 Rules.

v) Due to haphazardness on the part of the Board, number of factual discrepancies occurred in the marking of the boundaries of the Wards as number of residents of the Municipalities have been left out.

vi) However, it is reflected from the Order dated 18.09.2020 passed by this Court that submission with regard to constitution of Delimitation Board has been given up by the learned counsel for the petitioners, perhaps in view of the notification dated 13.8.2014 (Annexure R-6/IV) whereby instead of 'one member', 'two members' was substituted by way of amendment.

vii) In CWP No.14804 of 2020, learned counsel for the petitioner has vehemently argued that the map of proposed delimitation of wards reveals that even the boundaries of the wards are not touching each other in a chronological order as the boundaries of Ward No.38 do not strike with Ward No.39. Likewise, periphery of Ward No.40 does not touch with Ward No.41. Even, the boundaries of Ward Nos.42, 43, 48 and 49 are not touching with each other in sequential order.

viii) Learned counsel for the petitioners in support of their submissions has relied on the judgment of a full Bench of this Court in case ***Prithvi Raj Vs. State Election Commission and others, 2007 (3) RCR (Civil) 817.***

7. On the other hand, learned counsel for the official respondents have, *inter-alia*, made the following submissions:-

i) So far as the submission with regard to violation of principles of natural justice is concerned, it has been argued that objections have been duly considered and decided by the official respondents, and therefore, there is no question of violation of the principles of natural justice. In support of this submission, learned counsel for the State has referred to the photocopies of the vernacular/translated copies of the record produced in Court.

ii) The notification dated 18.8.2020 has been issued superseding the earlier notification dated 21.11.2019 which resulted in annulment and replacement of the previous notification dated 21.11.2019 and the said notification would have no force in the eyes of law and therefore, any action subsequent thereto including the constitution of the Delimitation Board vide notification dated 14.07.2020 is sustainable in law.

iii) Similar matters pertaining to different Municipalities have already been considered and dismissed by this Court vide Order dated 16.12.2020 passed in CWP Nos. 20082 of 2020 (Rinka Puri and others Vs. Union of India and others) and dismissed as infructuous by Coordinate Bench of this Court in CWP Nos. 12436/2020 (Neeraj Sahni

Vs UOI and others), CWP No. 12539/2020 (Prem Chand Garg Vs UOI and others) and CWP No. 13257/2020 (Pavittar Singh Vs UOI and others).

iv) It has further been argued that so far as granting of 7 days time is concerned no such time limit is prescribed under the provisions of the 1972 Rules. Rule 8 is itself a complete and specific provision which provides publication of the scheme for the delimitation of the Wards by eliciting objections/suggestions from the affected persons of the Municipality. No such time frame is mentioned under the said Rule. As such in the presence of the specific provisions of Rule 8 of the 1972 Rules, the reliance upon 1979 General Rules is misplaced and misconceived.

v) On the submission of the petitioners with regard to delimitation in a haphazard manner and leaving out the residents of the municipalities, it is argued that the seats have been fixed as per Rule 3 of the Determination of the Number of Elected Members and Reservation of Offices of Presidents of Municipalities Rule, 1994. As per Rule 3, Schedule 1, the criteria for determining number of elected member in Municipal Councils/Panchayats is on the basis of population as ascertained during the last preceding census of which the relevant figures have been published. As such fixation of number of seats has been carried out on the basis of this Rule. Furthermore, the Wards are fixed as per the rules which provide for fixation of seats as per last census and this process nowhere debars any person from casting his vote and all the voters falling under the four corners of the Ward have a right to vote.

vi) In so far as the arguments raised in CWP No.14804 of 2020 with regard to map of the area is concerned, it is submitted that the reservation of wards and boundaries are as per geographical compactness and rotation which have been duly carried out as per rules.

8. 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.

9. We do not find any merit in the submissions of the learned Counsel for the petitioners. Before proceeding further, it would be proper to reproduce the relevant Rules 3, 4 and 8 of the 1972 Rules which read as under:-

“3.Constitution of Board- (1) For the purposes of carrying out the provisions of these rules, the Government shall constitute a Delimitation Board for each Municipality consisting of the following members namely:-

(i)The Deputy Commissioner of the District in which the Municipal Council/Nagar Panchayat is situated or any other Officer nominated by him in this behalf;

(i)(a) member of the Punjab Legislative Assembly representing the concerned Municipality.]

(ii) Sub-Divisional Officer;

(iii) The Deputy Director, Local Government of the region concerned.

(iv) The President or Administrator of the Municipal Council or Nagar Panchayat concerned; and

(v) Executive Officer of the Municipal Council or Nagar Panchayat concerned.]

(vi) [Two members] nominated by the Government by notification.]

[(2)] The Board shall associate with itself for the purpose of assisting it in its day to day functioning not more than five members of a Municipality having due regard to the representation of various political parties and groups in the composition of the Municipality. The names of the associate members shall be sponsored to the Director by the Executive Officer of the concerned Municipality in consultation with the concerned Deputy Commissioner. This provision shall however, not apply in the case of a dissolved Municipality.]

4. Functions of Board:- It shall be the duty of the Board-

[(1) to divide the Municipality into such members of wards as may be necessary having regard to the number of elected members determined by the State Government, for the [Municipality], and the number of seats reserved for members of the Scheduled Castes, Backward Classes and women.]

(ii) to re-adjust the wards as and when the limits of the Municipality are altered or there is increase in population of the Municipality or there is abnormal variation in population or voting figures of some of the wards of the Municipality, which requires, such re-adjustment.

8. Publication of scheme for delimitation of wards:- The State Government shall-

- (a) Publish in the official gazette the scheme for the delimitation of wards received by it under Rule 7 for eliciting objections or suggestions from the affected persons of the Municipality.*
- (b) Specify a date on or after which the scheme alongwith objections and suggestions, if any, will be considered by it;*
- (c) Consider all objections and suggestions which may have been received by it before the date so specified; and*
- (d) Thereafter, by order determine the delimitation of wards of the Municipality.*

Rule 8 of the Punjab Municipal Corporation Act, 1976 reads as under:-

8.Delimitation of wards.-(1) For the purposes of election of councillors, 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.”

10. From perusal of Rule 4 of the 1972 Rules, it is apparent that the said provisions prescribe the duties of the Delimitation Board. The duties of the Delimitation Board are to divide the Municipality into such number of Wards as may be necessary having regard to the elected members determined by the State Government, for the Municipality and the number of seats reserved for members of Scheduled Caste, Backward Classes and women and to re-adjust the wards as and when the limits of the Municipality are altered or there is increase in the population of the municipality or there is abnormal variation in population or voting figures of some of the wards of the municipalities, which requires, such readjustment.

11. As noticed above, the petitioners have already given up the argument with regard to constitution of Delimitation Board which is reflected in the Order dated 18.9.2020 passed by this Court. It is evident from the record that the notification for constitution of Delimitation Board is issued on the basis of Rule 3 (1) of the 1972 rules for Municipalities under Clause 6 and 7 of the Order 1995. Before the

present writ petitions have been filed, the Union of India had already issued letter dated 25.03.2020 (Annexure R3/1) whereby to the similar effect is the letter dated 28.7.2020 (Annexure R-3/2) issued by the Registrar General and Census Commissioner, India to Chief Secretary to Government of Punjab and the notification dated 18.08.2020 (Annexure R-3/3) issued by the Government of Punjab requesting it to give effect to the changes in existing administrative boundaries, if any latest by 31.12.2020 since the date of freezing of boundaries is upto 31.12.2020. However, the said letters were not annexed along with the writ petition by the petitioners nor the same had been brought to the notice of this Court at the initial stage which resulted into passing the stay order dated 11.8.2020 which caused vacation of stay vide order dated 18.9.2020 passed by this Court. From the conduct of the petitioners, it is apparent that the petitioners have not come to this Court with clean hands since there is concealment and suppression of candid and material facts and documents which has vitiated the entire proceedings. We are constrained to observe that more often than not, the process of the court is being abused. It has to be remembered that court's proceedings are sacrosanct and should not be allowed to be polluted by such unscrupulous persons.

12. So far as the arguments of learned counsel for the petitioners with regard to notification dated 18.8.2020 (Annexure R-3/3) is concerned, that the said notification would operate prospectively and thus the illegality of forming of Delimitation Board before issuance of notification dated 18.8.2020 does not stand cured. Suffice it to say that the previous Notification dated 21.11.2019 (**P-4**) stands replaced by

Notification dated 18.08.2020 (R-3/3) and such replacement takes effect from 21.11.2019. Consequently, the formation of Delimitation Board cannot be said to be 'tainted' in the eyes of law.

13. Assuming for the sake of arguments that the notification dated 18.08.2020 (R-3/3) is prospective still we are of view that same would not make the notification dated 14.07.2020 directing formation of delimitation board illegal. A perusal of the notification dated 21.11.2019 and 18.08.2020 would show that same have been issued by invoking Rule 8(iv) of the Census Rules, 1990, whereas the Delimitation Board has been notified by invoking Rule 3(1)(vi) of the 1972 Rules. The 1972 Rules have been framed in view of Section 240 of the Punjab Municipal Act, 1911 which in-turn has a Constitutional Backing as well as Independence from any other Acts in existence. Thus, it is seen that there is no conflict amongst the Rules involved, vis-à-vis constitution of Board is concerned which ipso-facto would make it void. The freeze is on delimitation of boundaries and not on actual constitution of Board. Vide notification dated 14.07.2020 (P-4) only delimitation board was constituted and boundaries were not expanded/shrunk. Since on 18.08.2020, notification ordering de-freezing of boundaries was issued therefore the final publication Under Rule 9 would be saved. Hence, even this argument raised by Ld. Counsel for petitioner is without merit.

14. The argument regarding grant of insufficient time for filing objections to notification dated 14.07.2020 (P-5) is also without any merit. We are of the opinion that insufficiency of time for filing objections cannot be a ground for striking down the Constitution of

Board, especially when no time has been prescribed by the Rules 1972. The validity of the said Rules, which do not provide for any specific time, are not even under challenge before this Court. Even otherwise, it is not the case of the petitioner that he did not know about the notification pertaining to constitution of Delimitation Board. Further, we are of definitive opinion that when specific statutory rules of 1972 are in place governing the procedure and process for de-limitation, then 1979 Rules cannot be applied so as to imply any time frame for calling of objections.

15. Likewise, the argument that certain areas have been completely left out during the delimitation process and same has been done in tearing hurry are also without any merit. It is clear from the pleading of the parties, to which there is no rebuttal that the Statutory Boundary of Municipalities are not being changed and in fact, division of wards as per population is being done. It has been specifically mentioned in the affidavit filed by respondent no 6 that the seats have been fixed as per Rule 3 of the Determination of number of Elected Members and Reservation of Offices of Presidents of Municipalities Rules, 1994. As per Rule 3, Schedule-I, the criteria for determining the number of elected members in Municipal Councils and Panchayats is on the basis of population as ascertained at the last proceeding census of which the relevant figures have been published. Further, in view of the fact no person has been debarred from casting his/her vote and all the voters are permitted to cast their vote in their jurisdiction, we are convinced that no prejudice has been caused to any voter as alleged.

16. Apart from that, the objections raised by the petitioners have been duly considered by the Board, which is reflected from the photocopies of the record produced before this Court.

17. In CWP No.11619 of 2020, sole petitioner, Kulwinder Singh filed objections and the same has been considered by the Board vide order dated 05.8.2020, which is reflected at serial No.11, where there were total 21 objections/suggestions filed by the residents of Municipal Council, Zirakpur. Objections/suggestions at Sr. No.3, 16, 16-A, 16-B, 18, 21, 21-A, 21-B and 21-C were admitted and required revision/change, while the objections/suggestions at Sr.No.1,2,4 to 15, 17, 19, 20 and 22, on having examined by the Delimitation Board were found to be devoid of merits and were turned down. Thus, the objections/suggestions raised by the petitioner Kulwinder Singh have been duly considered and rejected by the Delimitation Board.

18. So far as the objections raised by petitioner Makhan Singh in CWP No.12143 of 2020 are concerned, they have also been considered by the Board which is reflected at serial no. 1 of its proceedings. There were total eight objections raised by the residents of Municipal Council, Nawanshahr, all of which were considered by the Board.

19. So far as objections raised by petitioners Shiv Kumar Sood, Vinod Parmar, Nipun Sharma and Rakesh Kumari Sood in CWP No.13143 of 2020 are concerned, the Board received 38 objections. The objections raised by petitioners No.1 and 2 have been duly considered whereas petitioner No.3 and 4 had not filed objections as per record of the Board.

20. So far as objections raised by sole petitioner- Barjinder Singh Brar in CWP No.13560 of 2020 are concerned, the Board received 41 objections from the residents of Municipal Corporation, Moga, all of which were considered by the Board. Objections raised by petitioner have been duly considered by the Board which is reflected at Sr.No.40 in its proceedings.

21. In CWP No.13151 of 2020 petitioner- Ashok Kumar Sofat seems to have not filed any objection, however, other residents of Municipal Corporation, Mandi Gobindgarh have filed 43 objections, which were duly considered by the Board in its proceedings.

22. So far as the objections raised by petitioners- Pawan Kumar and Manjeet Kaur in CWP no.14353 of 2020 are concerned, they have also been considered by the Board. Total ten objections were raised by the residents of Municipal Council, Lalru, S.A.S. Nagar, Mohali, all of which were considered by the Board. Objections raised by aforesaid petitioners have been duly considered by the Board which is reflected at Sr.Nos.2 and 4 in its proceedings.

23. So far as the objections raised by petitioners in CWP no.16979 of 2020 are concerned, they have also been considered by the Board. There were about seventeen objections raised by the residents of Municipal Council, Derabassi, District S.A.S. Nagar, Mohali, all of which were considered by the Board. Objections raised by most of the petitioners have been duly considered by the Board which is reflected at Sr.Nos.6, 9, 10, 14 and 15 of its proceedings.

24. So far as the objections raised by petitioner Rajwinder Singh Sidhu in CWP No.14804 of 2020 are concerned, they have also been considered by the Board as reflected in the reply filed by the State of Punjab dated 01.01.2021. There were 42 objections raised by the residents of Municipal Corporation, Bathinda, all of which were considered by the Board. Objections raised by the petitioner have been duly considered by Board which is reflected at Sr.No.16 of its proceedings.

25. From the perusal of the records produced by the respondents and narration of facts made above, we are of the considered opinion that the respondents have duly considered the objections of the petitioners.

26. The reliance of the learned counsel for the petitioners in **Prithvi Raj (supra)** is of no help. In **Prithvi Raj's** case, a Full Bench of this Court examined the power of High Court under Article 226 of the Constitution of India for interference in election matters. There is no dispute with this proposition of law. It is well settled that this Court has extraordinary jurisdiction under Article 226 of the Constitution of India to examine any perversity, arbitrariness, biasness, patent illegality, irrationality, jurisdictional error and procedural irregularity on the part of the State mechanism. Except on these grounds administrative decisions are not interfered with, in exercise of the extra ordinary power of judicial review. In the present case, we find no perversity, arbitrariness and illegality in the action of the official respondents.

27. Apart from that, similar matter has already been considered by this Court in **CWP No.20082 of 2020 (Rinka Puri and others Versus**

Union of India and others decided on 16.12.2020) wherein, it has been held as under :-

“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. In view of the above, we see no reason to interfere with the action of the official respondents. The writ petitions fail and are dismissed accordingly, with no order as to costs.

(ASHOK KUMAR VERMA)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

25.1.2021

MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes