

(102) (Proceedings through Video Conferencing/WhatsApp)

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

Date of Decision: 25.1.2021

1. CWP No.20406 of 2020

Shiv Kumar Sood and others ...Petitioners

Versus

Union of India and others ...Respondents

2. CWP No.20547 of 2020

Bhagat Ram ...Petitioner

Versus

State of Punjab and others ...Respondents

3. CWP No.21033 of 2020

Lakhwinder Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

4. CWP No.21143 of 2020

Kuldeep Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

5. CWP No.21496 of 2020

Rajvinder Singh Sidhu ...Petitioners

Versus

State of Punjab and others ...Respondents

6. CWP No.21663 of 2020

Shiv Kumar Kalia and others ...Petitioners

Versus

State of Punjab and others

...Respondents

7. CWP No.18317 of 2020

Princi Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

8. CWP No.137 of 2021

Amit Mittal

...Petitioner

Versus

State of Punjab and others

...Respondents

9. CWP No.139 of 2021

Atma Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioners in CWP Nos.20406, 20547 and 21496 of
2020.

Mr. Puneet Gupta and Mr. Anil Rana, Advocates
for the petitioner(s) in CWP No.21143-2020.

Mr. Vikas Kumar, Advocate
for the petitioner(s) in CWP No.21663-2020.

Mr. Ravi Chadda, Advocate
for the petitioner(s) in CWP No.21033-2020.

Mr. Navjot Singh, Advocate
for the petitioners in CWP No.18317 of 2020.

Mr. Vivek Singla, Advocate
for the petitioners in CWP Nos.137 and 139 of 2021.

Mr. S.P.S. Tinna, Additional Advocate General, Punjab.

Ms. Anu Chatrath, Senior Advocate with
Mr. Nishant Maini, Advocate for the respondent(s)-MC.

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

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

ASHOK KUMAR VERMA, J.

1. This order will dispose of CWP Nos.20406, 20547, 21033, 21143, 21496, 21663, 18317 of 2020, 137 and 139 of 2021 as common questions of law and facts are involved in all the connected writ petitions. For the sake of brevity and convenience, a glance of facts are being taken from CWP No. 20406 of 2020.

CWP Nos. 20406, 20547, 21033, 21143, 21496, 21663, 18317 of 2020

2. The petitioners have approached this Court through these writ petitions for quashing the notification dated 22.10.2020 (Annexure P-8) concerning the delimitation of wards alongwith map issued by the official respondents which is said to be in violation of the provisions of the Punjab Municipal Corporation Act, 1976 (for short 'Act of 1976'), the Delimitation of Wards of Municipal Corporation Order (for short "Order of 1995"), the Delimitation Act, 1972 (for short 'Act of 1972'), Census Act, 1948 (for short 'Act of 1948'), Census Rules, 1990 (for short 'Rules of 1990') and Chapter IX (A) of the Constitution of India and that too without deciding the objections dated 16.09.2020 (Annexure P-7) submitted by the petitioners with regard to delimitation of the wards,

reservation, population, contiguity etc. of the Municipal Corporation, Hoshiarpur.

CWP Nos. 137 and 139 of 2021

Through these two petitions the petitioners have challenged the notification dated 17.11.2020 (Annexure P-2) whereby the respondents are said to have changed illegally the serial no. of ward from 12 to 13 and ward no. 4 to 5, respectively.

3. 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 as they have not considered and decided the objections/representation(s) of the petitioners. Furthermore, the petitioners have not been granted opportunity of personal hearing by the official respondents.
- ii) Notification dated 22.10.2020 (Annexure P-8) issued by respondent No.2 is illegal and improper since it depicts non-application of mind of the official respondents. It is submitted that delimitation of wards in Municipal Corporation, Hoshiarpur was not warranted as there is neither any change in the boundaries of the city nor any change in the population. As such fresh delimitation of wards was not required. The fact regarding non-increase in the population and non-change in the geographical area/boundary is evident from the information provided vide letter dated 31.07.2020 (Annexure P-6) under Right to Information Act, 2005.

iii) Notification dated 22.10.2020 (Annexure P-8) has been issued in violation of the notification dated 09.12.2019 (Annexure P-3). A perusal of notification (Annexure P-3) shows that out of total 50 wards 12 seats were reserved for the candidates belonging to Scheduled Caste category, 36 seats were reserved for General Category and two seats were reserved for Backward Class category candidates. Whereas vide notification (Annexure P-8), the seats belonging to Scheduled Caste category have been increased from 12 to 13 and thereby the seats belonging to General Category have been decreased, which resulted into inadequacy of candidate belonging to General Category in Municipal Corporation, Hoshiarpur.

iv) It is further submitted by the learned counsel for the petitioners that the Notification (Annexure P-8) has been issued in violation of the provisions of Chapter IX(A) of the Constitution of India, since Article 243P(g) provides the definition of “population” as ascertained at the last preceding census and in compliance to the said Chapter, Rules of 1990 have been framed which mandates the State Government to issue notifications to freeze the administrative boundaries of local areas on such date as is intimated by the Census Commissioner. The action of the official respondents is against the provisions of Chapter IX(A) of the Constitution of India and their own Notification dated 09.12.2019 (Annexure P-3), which has not been withdrawn.

v) It is further argued that Notification (Annexure P-8) infringes upon the rights of the voters of the Wards to vote as provided under Article 326 of the Constitution of India as also the political rights

of the petitioners to represent residents of their Wards have also been adversely affected since vide the said Notification the official respondents have re-casted the area/boundaries of the Wards which are wanted to be represented through the petitioners and as such the voters of the areas of the petitioners could not be able to cast their votes in favour of their candidates and thus their right to vote would be affected.

vi) The respondents have not applied their mind while issuing Notification (Annexure P-8), which is apparent from the facts that once the Municipal Corporation itself resolved vide Resolution No.52 that upcoming elections will be held on the basis of old delimitation of wards and the said resolution was received by respondent No.5 and without suspending or nullifying the said resolution, Notification (Annexure P-8) was issued illegally since there is no change in the geographical area.

vii) Last but not the least, it is argued by the learned counsel for the petitioners that the official respondents have acted in a mala fide manner because of political reasons.

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

i) It is argued that the writ petitions filed by the petitioners are misconceived. The State of Punjab has issued a notification dated 27.11.2020 (Annexure- R-2/1) for holding General Elections/bye elections in the Municipal Corporations/Councils of the Districts of the petitioners. It is further argued that vide letter dated 01.12.2020 (Annexure R-2/2) the State Election Commission, Punjab has declared

the programme/dates with regard to preparation of electoral rolls etc. of the Municipal Corporations/Municipal Councils/Nagar Panchayats.

ii) It is further argued that the Notification dated 22.10.2020 (Annexure P-8) has been legally notified. In view of Article 243ZG of the Constitution of India, the validity of any law relating to the delimitation of constituencies, made or purporting to be made under Article 243ZA shall not be questioned in any Court and as such the writ petitions filed by the petitioners are not maintainable.

iii) There is no question of violation of principle of natural justice as there is no provision in the rules that the petitioners should be given an opportunity of personal hearing at the time of considering the objections with regard to the Delimitation of Wards.

iv) So far as the submission of the petitioners with regard to resolution No.52 dated 09.03.2020 is concerned, it has been argued that even when if Municipal Corporation, Hoshiarpur had passed Resolution No.52 dated 09.03.2020 regarding the coming elections to be held as per the old delimitation of wards, it would not be an impediment for the State Government to get delimitation of wards done in consonance of Wards of Municipal Corporation Order of 1995. It is further argued that in a clash between a resolution passed by the Municipal Corporation and delimitation of wards made under the orders of the State Government in exercise of powers granted to it under the statute/rule, it is the latter which shall prevail. The process of delimitation has been carried out as per the decision of the Delimitation Board which is the competent authority under Rule 7 of the Order of 1995.

v) It has been further argued by the learned counsel for the official respondents that the flaws in fixing the wards in the year 2014 have been cured by the present delimitation of wards. Furthermore, the Ministry of Home Affairs issued letter dated 18.8.2020 vide which the dead line has been extended for giving effect to the changes in the existing boundaries of towns, revenue villages, tehsils, districts etc. till 31.12.2020 and this issue has already been dealt with by this Court vide order dated 18.09.2020 thereby vacating the interim stay granted in CWP No.11619 of 2020 titled as Kulwinder Singh Vs. Union of India and others along with other connected cases.

vi) So far as the submission of the petitioners with regard to mala fide intention on account of political reason is concerned, it has been vehemently denied by the official respondents and further stated that no cogent and tangible material has been placed on record to show any mala fide intention on their part.

vii) In support of the aforesaid submissions, learned counsel relies on a judgment passed by this Court in **CWP No.20082 of 2020** (Rinka Puri and others Versus Union of India and others decided on 16.12.2020), 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 etc.

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

6. We do not find any merit on the submissions of the learned counsel for the petitioners. 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 Delimitation Board. Learned State Counsel has taken us to the relevant pages of the record and from the perusal of the said record, we find that not only the objections of the petitioners, but the objections raised by other people have also been duly considered.

7. So far as the objections with regard to Municipal Corporation, Hoshiarpur, raised by petitioner Nos.1, 2 and 5 in CWP No.20406 of 2020 are concerned, the same have been duly considered by the Board which is reflected in its proceedings whereas, petitioner Nos.3 and 4 have not submitted their objections as per the record of the Board. From the record, it appears that there were total thirty eight objections raised by the residents of Municipal Corporation, Hoshiarpur, all of which were considered by the Board.

So far as objections with regard to Municipal Corporation, Hoshiarpur, raised by the petitioner in CWP No.20547 of 2020 are concerned, the same have been duly considered by the Board which is reflected in its proceedings.

So far as the objections raised by petitioner No.1, Lakhwinder Singh in CWP No.21033/2020 are concerned, the same have been duly considered by the Board. Although no specific decision has been taken on the objections of petitioner no.2-Kulwant Singh, but from a perusal of the proceedings of the Board, it is apparent that the Board has taken decision on number of objections raised by different residents of the area, wherein the Board has also taken decision with regard to the objections of petitioner no.2 also in some way or the other.

The objections raised by petitioners in CWP No.21143/2020 with regard to Municipal Council, Bhwanigarh, District Sangrur, have also been duly considered by the Board, which is reflected at serial No. 1 of its proceedings.

The objections raised by petitioner in CWP No.21496/2020 with regard to Municipal Corporation Bathinda, have also been duly considered by the Board which is reflected at serial Nos. 16 and 32 of its proceedings.

The objections raised by petitioners in CWP No.21663/2020 with regard to Municipal Corporation Amritsar, have also been duly considered by the Board, which is reflected at serial No 4 of its proceedings and 9 objections raised by the other residents of Municipal Corporation Amritsar were also decided.

The objections raised by petitioners in CWP No.18317/2020 with regard to Municipal Council Bhuchio Mandi, District Bathinda have also been duly considered by the Board, which is reflected at serial Nos. 1 to 4 of its proceedings.

In CWP Nos.137/2021 and 139/2021, the petitioners have moved representations dated 08.12.2020 and 16.12.2020, respectively with regard to changing the number of the wards of Municipal Council Jaitu, District-Faridkot and against the wardbandi of the Municipal Council. It appears that the petitioners have not filed objections within the time span and have belatedly moved the representations, after the objections raised by other residents of the Municipal Council Jaitu, which have been duly considered by the Board and the same are reflected from serial Nos.1 to 8 of its proceedings.

8. Apart from that, the issues raised in the present writ petitions have already been decided by this Court in **Rinka Puri, supra**, wherein it has been held as under:-

“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 Muncipal 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.”*

9. Similarly, in the present case, the State Election Commission, Punjab has also issued programmes for preparation of electoral rolls of Municipal Corporations/Councils/ Nagar Panchayats vide its letter dated 01.12.2020 (Annexure R-2/2), wherein it is mentioned that the Election Commission has planned to hold a General/Bye Elections of the Municipal Corporations etc. for this purpose electoral rolls are to be prepared with reference to 01.1.2021 as the qualifying date. The programmes for preparation of electoral rolls are as under:-

“PROGRAMME

1. Preparation of Electoral Rolls : Upto 09.12.2020
 2. Draft publication of electoral rolls : 10.12.2020
 3. Last date for filing claims and : 16.12.2020
Objections.
 4. Disposal of claims and objections by. : 23.12.2020
 5. Final publication of Electoral Rolls : 05.01.2021”
10. Having regard to the aforesaid discussions, we find no perversity, arbitrariness, illegality and irrationality in the action of the official respondents. Furthermore, elections in a democratic society has always been recognised to be a matter of utmost importance inasmuch as elections should be conducted as early as possible as per the time schedule. Thus, the election process cannot be allowed to be stalled, retarded or protracted by the petitioners in these petitions.

11. In view of the above, 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

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>