

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11710-2021

Date of decision:-19.05.2022

Ashok Kumar Kadwasara and anr

....Petitioners

VS

State of Haryana and ors.

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl.A.G, Haryana with
Mr. Saurabh Mago, AAG, Haryana

Ritu Bahri, J.

Through the present writ petition, the petitioners are seeking setting aside of order dated 24.05.2021 (P-7); order dated 30.04.2021 (P-6); final wardbandi of Panchayat Samiti and Zila Samiti dated 28.05.2021 (P-8 and P-9).

Brief facts of the case are that the initial list of Wardbandi for the purpose of holding elections of Panchayat Samiti and Zila Parishad Tosham was issued on 26.04.2021 as per Rule 4(6) of the Haryana Panchayati Raj Election Rules 1994 (for short 'Rules 1994'). The copy of the initial list of Wardbandi of Panchayat Samiti and Zila Parishad are attached as Annexures P-1 and P-2. The objections were to be decided from 30.04.2021 to 05.05.2021 as per Rule 4 (6) of Rules, 1994 and appeal, if any, against the order of SDO (C), was to be filed before the Deputy Commissioner within three days i.e. from 06.05.2021 to 08.05.2021 as per Rule 4 (8) and the Deputy Commissioner was required to decide the appeal from 10.05.2021 to 19.05.2021 and the final publication of wards was to be

published on 20.05.2021.

Thereafter, the petitioners and others filed certain objections before the Sub Divisional Officer (Civil) Tosham that Village Patodi Khurd, which comes in Ward No.21 of Panchayat Samiti. The Hadbast of Village Patodi Khurd and Patodi Kalan is same, which is known as Patodi. However Panchayats are two and the population of both villages are approximately equal to the ward of one Panchayat Samiti. In Ward No.21, the Wards No.15 to 18 of Village Sandwa Panchayat have been included, these all three wards be removed from our Panchayat Samiti Ward No.21 and our both villages be kept in Ward No.21 separately. The copy of the objection dated 29.04.2021 is Annexure P-3.

Petitioner No.1 also raised the objection regarding Wardbandi of Zila Parishad that Ward No.12 of Zila Parishad Miran, Gakhpura Kalan, Gakhpura Khurd and Chapar Jogiyan be included in Ward No.13 of Zila Parishad. Further from Ward No.13 of Zila Parishad Village Sandwa, Bushan, Sahlewal, Hasan be included in Ward No.13 of Zila Parishad. Further requested to include Village Alampur, Pilorh, Kharkadi, Sohan, Dabrik in Ward No. 12 from Ward No. 14 of Zila Parishad. The copy of objection dated 29.04.2021 is Annexure P-4.

Petitioner No.2 also raised objection and requested for change in Ward No.12, 13 of Zila Parishad and requested that three villages Garanpura Kalan, Garanpura Khurd and Chappar Jogiyan be included in Ward No. 13 instead of Ward No. 12 on the ground that these villages are within 10-15 km from Ward No.13. Copy of objection dated 29.04.2021 is Annexure P-5.

The grievance of the petitioners before this Court is that their

objections were dismissed vide non speaking and non-reasoned order, while passing the impugned order 30.04.2021 (P-6).

Petitioners filed appeal before Lower Appellate Authority and the appeal was dismissed, vide order 24.05.2021(P-7). Thereafter the final publication has been done for the Wardbandi of Panchayat Samiti as well as Zila Samiti on 28.05.2021 (P-8 and P-9).

On notice of the petition, a reply dated 25.07.2021 has been filed on behalf of respondent Nos. 2 and 3 and in preliminary submission, it has been stated that the Zila Parishad, Bhiwani comprised of 30 wards in the 5th PRI term (2016 -2021). Thereafter, the District Charkhi Dadri was constituted from District Bhiwani and the 9 Wards of Zila Parishad, Bhiwani were shifted to District Charkhi Dadri and the Govt. has re-fixed the wards for Zila Parishad(ZP), Bhiwani to 22 from remaining 21 wards. Therefore, the Wardbandi was necessary to be done again due to increase of number of Wards. Now, by considering the population of Panchayat Samitis (PS) and compactness of Wards, the respondent no. 1 decided to increase one ward of Zila Parishad in Block Tosham being highest population as in the Year 2020 four Villages namely Bhera, Dhani-Dariyapur, Dariyapur and Chanana are included in Block Tosham from Block Siwani. There were 3 Zila Parishad Wards in the previous term in Block Tosham, hence, as per final publication there are 4 wards of ZP in Block Tosham.

Further, publication of Wardbandi of ZP, Bhiwani and PS, Tosham was done on 26.04.2021. Thereafter, objections were to be received by the concerned Sub Divisional Officer (C) from 27.04.2021 to 29.04.2021, which were to be decided from 30.04.2021 to 05.05.2021 as per Rule 4(6) of the Haryana Panchayati Raj Election Rules, 1994. As per Rule

4(8) of the above Act, the appeal against the order of Sub Divisional Officer (Civil) were to be filed before the Addl. Deputy Commissioner (answering Respondent No. 3) within 3 days i.e. from 06.05.2021 to 08.05.2021 and further the appeals were to be decided from 10.05.2021 to 19.05.2021. The final publications of wards were to be published on 20.05.2021 and after extension, the same was published on 28.05.2021. The SDO (C), Tosham as well as appellate authority (answering Respondent No. 3) heard all the appellants in detail and passed a detailed and well-reasoned order. Respondent No. 2 (Deputy Commissioner, Bhiwani) has only published final wardbandi after decision of the appellate authority.

The population of Ward No. 21 of PS, Tosham is 4528 by comprising the Village Patodi Kalan (1613), Patodi Khurd (1430) and Ward No. 15 to 18 of Gram Panchayat Sandwa (1485). However, the population of other wards of PS is above 4000. If the objections of the petitioners were accepted, then the total population of Ward No. 21 of PS, Tosham would be 3043, which would be very low than others. Hence to form the uniformity of population in PS wards, the Ward No. 15 to 18 of Gram Panchayat (GP) Sandwa are included in PS Ward No. 21 of Block, Tosham.

The village Miran, Garanpura Kalan, Garanpura Khurd and Chhapar Jogiyan were in the ZP Ward No. 12 as per Preliminary Publication of Wardbandi of ZP, Bhiwani, which was published on 26.04.2021 and the petitioners objection was to shift these villages in the ZP Ward No. 13. The above said villages are in the middle of ZP Ward No. 12 from North to South direction and by accepting the objection of petitioners, the Ward No. 12 of ZP bifurcates in two parts. Further, the petitioners want to include Village Sandwa, Hasan, Busan and Sahlewala from ZP Ward No. 13 to ZP

Ward No. 14 and Village Alampur, Thilod, Kharkari Sohan, Dhani Riwasa in ZP Ward No. 12 from ZP Ward No. 14, which destroys the compactness of all three Wards, Hence, to maintain the compactness of Wards, the objection of the petitioner was rightly rejected. The map showing the compactness of the area/ward is attached as Annexure-R-1.

The petitioners filed the appeal (s) before respondent No. 3 and after hearing the parties at length, a speaking order was passed in the appeal. This fact was in the knowledge of petitioner No. 1, but he did not seek any information regarding the site plan/map from the Appellate Authority. Respondent No. 2 (Deputy Commissioner, Bhiwani) has only published final wardbandi after the decision of the Appellate Authority. The original file along with claims/objections pertaining to the appeals of ZP/PS, Tosham is in the office of Respondent No. 3.

No replication has been filed till date to the reply filed on behalf of respondent Nos. 2 and 3.

Heard learned counsel for the parties at length.

The above said issue has been discussed in detail by this Court in a case of ***Rinka Puri and others vs. Union of India and others***, 2021 (1) PLR 733 whereby the petitioners approached this Court seeking quashing of final notification made under the provisions of the Delimitation of Wards of Municipal Corporation Order 1995. The petitions were dismissed and it was held that Article 243-ZG clearly lays down bar to interfere by Courts of law in election matters and validity of any law relating to delimitation of constituencies or allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA shall not be called in question in any Court and even no election to any Municipality shall be called in

question except by election petition presented to such authority and in such manner as is provided for by or under any law made by legislature of State. The writ petitions were thus held to be not maintainable. In para No. 20, it has been observed as under:-

“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.”

Reference at this stage can be made to order dated 24.05.2021

(P-7) whereby detailed reasoning has been given that it is not possible to constitute the Zila Parishad Ward as per Geographical view and as per ratio of population of Panchayat Samiti wards.

Thus, to maintain the compactness of Wards, the objection of the petitioner was rightly rejected. The final wardbandi of Panchayat Samiti and Zila Samiti dated 28.05.2021 (P-8 and P-9) have rightly been issued after following due process of law and after giving opportunity of hearing to the petitioners.

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

19.05.2022
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No