

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-3195-2023 (O&M)
Reserved on: 03.12.2024
Pronounced on: 17.12.2024

Manoj Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Ankur Mittal, Advocate and
Ms. Kushaldeep Kaur, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. K.D.S. Sidhu, Advocate
for respondent No.6.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner(s) herein
pray for the hereinafter extracted reliefs:

“Civil Writ Petition under Article 226/227 of the Constitution of India praying for issuance of a writ, order or direction especially in the nature of Certiorari for quashing of notification dated 23.12.2022 (Annexure P-1) vide which the respondent Department of Local Government Punjab has made publication of limits of ward boundaries of 13 wards of Nagar Panchayat Khanauri, District Sangrur and reservation made for SC/SC Women/Women and BC Category in those wards; considering the fact that neither the constitution of Delimitation Board for determining ward boundaries of Nagar Panchayat, Khanauri, District Sangrur was in accordance with mandatory provisions of Rule 3 of The Delimitation of Wards of Municipalities Rules, 1972 nor the ward boundary limits fixed by said Delimitation Board are in accordance with Rule 4 and 6 of the mandatory provisions of The Delimitation of Wards of Municipalities Rules,

1972, as framed under Section 240 of the Punjab Municipality Act 1911, in the interest of justice.

And

Further prayed that the respondents may kindly be restrained from finalizing draft notification dated 23.12.2022 and issuing the notification for commencing process for conducting elections of Nagar Panchayat Khanauri, District Sangrur during the pendency of present writ petition before this Hon'ble Court, in the interest of justice.”

Submissions of the learned counsels for the petitioner.

2. The learned counsel for the petitioner(s) submits, that the impugned de-limitation notification(s) are illegal, arbitrary and against the principles of natural justice, besides breach the Rule of *audi alteram partem*. Moreover, he submits that the impugned notification(s) transgresses the mandatory provisions of the The Delimitation of Wards of Municipalities Rules, 1972. The allegedly breached provisions occurring in the aforesaid Rules, are extracted hereinafter.

“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 the Municipality having due regard to the representation of various political parties and groups in the composition of the Municipality. The names of 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 not, however, apply in the case of a dissolved Municipality.

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

(i) to divide the Municipality into such number of wards as may be necessary, having regard to the number of elected members prescribed 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.

5. xxxx

6. Principles for Delimitation of Wards of Municipality :- The following principles shall be observed by the Board in the delimitation of wards of a Municipality, namely: -

(a) All wards shall, as far as practicable, be geographically compact areas, and in delimiting them due regard shall be had to physical features, existing boundaries of administrative units, if any, facilities of communication and public convenience;

(b) Each Municipality shall be divided into wards in such manner that the population of each ward, as far as practicable, is the same throughout the Municipality, with a variation upto ten per cent, above or below the average population figures;

(c) Wards in which seats are reserved for the Scheduled Castes, shall be located, as far as practicable, in those areas where the proportion of their population to the total population of the Municipality is the largest and such seats shall be allocated by rotation to different wards in the Municipality.

(d) Seat numbers reserved for women (including number of seats reserved for women, if any, belonging to Scheduled Castes) by Government, shall be kept reserved for women and such seats shall be allotted by rotation to different wards in the Municipality; and

(e) One seat reserved for Backward Classes by Government, shall be kept reserved for Backward Classes which shall be located where their population in the Municipality is the largest and such seat shall be allotted by rotation to different wards in the Municipality.

(f) In every Municipality, the Delimitation Board, while drafting the scheme for Delimitation of Wards, shall allot number to all wards having due regard to the principle of constitution.

Provided that principle of rotation shall not be applicable where delimitation of wards of a Municipality has been done under the provisions of clause (ii) of Rule of the rules.

Explanation - In this rule, the expression "population" means the population as ascertained locally through the staff deputed by the Director, by going from door to door in the Municipality.

Submissions of the learned State Counsel.

3. On the other hand, the learned State Counsel submits that the Delimitation Board was legally constituted and in accordance with the provisions of The Delimitation of Wards of Municipalities Rules,

1972, besides the due procedure for the delimitation of the wards as provided under the said Rules, has been duly followed.

4. Furthermore, the State Election Commission has notified the Election Programme, thus to all the Deputy Commissioners-cum-District Electoral Officers in the State of Punjab. Thus, the election process has commenced and the instant petition would amount to the said municipal election being 'called in question', thereby, attracting the constitutional bar as engrafted in Article 243-ZG of the Constitution of India. The said Article 243-ZG of the Constitution of India is extracted hereinafter.

Article 243-ZG. Bar to interference by Courts in electoral matters - *Notwithstanding anything in this Constitution, —*

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 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.

Inferences of this Court.

5. Tritely put, once the election process has commenced through pronouncement of the election programme, thereby, there can be no interference with the said announced election schedule, as thereby it would breach the principle of law stated in the judgments rendered by the Apex Court in case titled as '***N.P.Ponnuswami Versus The Returning Officer, Namakkal Constituency and others***', reported

in ***1952 SCC Online (SC) 3*** and in case titled as '***Mohinder Singh Gill***

Versus The Chief Election Commissioner, New Delhi, reported in ***(1978) 1 Supreme Court Cases 405***. The relevant paragraphs as occur in the verdicts (supra) are extracted hereinafter.

(N.P.PONNUSWAMI VERSUS THE RETURNING OFFICER, NAMAKKAL CONSTITUENCY)

15. *The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like article 329 (b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.*

xxxx xxxx

20. *It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under article 226 of the Constitution. This argument however is completely shut out by reading the Act along with article 329 (b). It will be noticed that the language used in that article and in section 80 of the Act is almost identical, with this difference only that the article is preceded by the words*

"notwithstanding anything in this Constitution". I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress.

xxxxx xxx

24. It may be pointed out that article 329 (b) must be read as complimentary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that article 329 (b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself, i. e., it creates rights and provides for their enforcement by a special tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time-schedule of the elections. The more reasonable view seems to be that article 329 covers all "electoral matters".

25. The conclusions which I have arrived at may be summed up briefly as follows :--

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.

xxxxx xxx

***'MOHINDER SINGH GILL VERSUS THE CHIEF ELECTION
COMMISSIONER, NEW DELHI***

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

6. A reading of hereinabove extracted underlined portions of the conclusions as became drawn in the verdict (supra) rendered by the Hon'ble Supreme Court in **N.P.Ponnuswami's case (supra)**, thus unfold that :

a) Elections should be concluded as early as possible according to the time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may be not retarded or protracted.

b) The election laws as prevalent in this Country, do carry the import that no significance should be attached to anything which does not affect the election and that if any irregularities are committed while it is in progress, and whereby they would have the effect of vitiating the election yet the person affected by such purported vitiations, thus has the remedy to challenge the declaration of result, before a special Tribunal by means of an election petition being filed and ;

c) that any subject covering a dispute relating to the commission of any irregularities when the elections are in progress is not amenable to be agitated before a Court of Law.

7. In terms of the above culled out principles of law, as carried in the verdict (supra), the apt deduction therefrom but naturally, is that, any purported irregularities arising from breaches being caused to the principles appertaining to the carryings out of the de-limitation exercise, thus is a dispute though may purportedly vitiate the election, yet the said dispute cannot at this stage be raised before this Court by the aggrieved. **Contrarily, the said dispute is to be agitated by the aggrieved, but only after the declaration of the results, and only before the Election Tribunal concerned.**

8. In sequel, in view of the above expostulations of law made in verdict (supra), especially when the expostulations of law (supra) are not reversed by a Bench strength of the Hon'ble Supreme Court, thus larger in size vis-a-vis the Bench strength which delivered the verdict (supra), whereby there is a complete bar, against the invocation of the writ remedy by the aggrieved, even if the said grievance becomes hinged, upon, any purported breaches being caused to the statutory provisions relating to the de-limitation exercise. Moreover, in the wake of the said grievance but purportedly vitiating the elections, rather the remedy to the aggrieved, is only through the filing of an election petition before the Election Tribunal concerned. Consequently, the said expostulation of law is not required to be derogated from.

9. Furthermore, the principles (supra) rendered in

rendered by the Apex Court in '**Mohinder Singh Gill's case (supra)**'. Consequently, since the verdict (supra) reiterated the principles of law expounded by the Apex Court in '**N.P.Ponnuswami' case (supra)**', thereupon, the said reiterated principles, thus also apply with their fullest force, to the instant case, whereby there is a bar against the invocation of the writ remedy by the aggrieved rather during the course of undertakings of the announced election schedule, at the instance of the respondent.

10. Moreover, since in the instant case, the tenure of the elected councillors to the Municipal Corporations concerned rather has expired, thereby, when Article 243U of the Constitution of India, provisions whereof are extracted hereinafter, thus casts a constitutional mandate upon the authorities concerned, besides make a per-emptory injunction upon the authorities concerned, to coterminii therewith, to thus draw an election schedule. Resultantly the election programme was to be announced, as aptly done, and, was required to be potentialized rather than the same being interfered with.

243U. Duration of Municipalities, etc.

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

*(3) An election to constitute a Municipality shall be completed,-
(a) before the expiry of its duration specified in clause (1);*

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved.”

11. Be that as it may, the continuous updation and revampings of electoral rolls, is also a paramount necessity for ensuring, that therebys all the voters, who acquire the apposite eligibility, do become empowered to exercise their franchise. The effect thereof, would be that therebys the democratic process would be fully activated. Moreover, to give effectivity to the roster reservation system, as becomes contemplated in Article 243 T of the Constitution of India, thereupons, the said constitutional mandate is also required to be fully galvanized. The apposite galvanizations to the (supra) constitutional mandate, would occur only when the occurrences of respective increases in the populations' in the wards concerned, thus becomes gauged from or becomes raised upon a census being carried out. Moreover, subsequently to ensure the well administration of the wards concerned, which may not effectively take place owing to an immense increase in the demographic sizes within the apposite wards, thereupons, the de-limitation of wards is also a concomitant thereto necessity.

12. The respondent concerned, to facilitate the makings of lawful de-limitation of the wards concerned, but after a census being

conducted, for determining the demographic increases in the wards concerned, thus proceeded to make the exercise of delimitation of wards. In the said regard, the draft rules became prepared which become appended with the instant writ petition. The said draft Rules are encyclopedic and therefore, they need not be ad verbatim extracted.

13. Be that as it may, what would be required to discerned from the draft rules is :

a) Whether therebys there was adherence to the Rules of natural justice, besides to the principles set forth in the Delimitation of Wards of Municipality Rules, 1972 becoming borne in mind in the carryings out of the de-limitation exercise.

b) Whether the objections, as became preferred by the petitioner(s) were considered before the issuance of the impugned notification(s).

c) Whether there was untenable exclusion of voters in the voting list, thus on account of de-limitation being carried out.

14. In the above endeavour, it is apparent on a reading of the draft rules, that the exercise of de-limitation was taint free nor it breached the Rules (supra). In sequel, the undertakings of the well purpose of makings the de-limitation exercise, thus for takings into account the apposite demographic increases in the wards concerned, rather for concomitantly the reservation system becoming drawn, as has been drawn, but has also been achieved. Naturally also therebys, prima facie, there appears to be no exclusion of voters in the voters list, even after the completion of the de-limitation exercise, especially, when no

forth as such. Even if such a grievance is put forth, therebys, it was to be ventilated before and also was to be decided rather only by the Election Tribunal concerned, who on receiving such a motion, with averments therein, that on account of inapt exclusions of the eligible voters, from the voters list, thus may have proceeded to declare the election to be vitiated, the same being materially affected therebys.

15. However, the said grievance is stated to be neither put forth before the Election Tribunal concerned, through an election petition being cast therebefore, nor has been stated to be under consideration before the State Election Tribunal. Resultantly therebys, the completed de-limitation exercise, as done, but on the basis of a census, thus as a necessary precursor of the de-limitation of the wards taking place, but when naturally also becomes the hinge for the creation of a reservation roster for endowing the apposite representations to the category(ies), whose population size so deserves. In sequel, the de-limitation exercise, as undertaken but cannot be faulted on any score, especially, when the election programme has been announced, election programme whereof, is un-interfereable in terms of the expostulations of law made in the verdicts (supra). Importantly also, when there is no grievance that in pursuance to the de-limitation exercise, their being any evident deprivation of the rights of exercising franchise vis-a-vis any of the voters, therebys, also the de-limitation exercise cannot be faulted.

16. Moreover, when roster reservation system has already been notified, wherebys, the benefit of the apposite reservation to the deserving categories, in terms of their apposite demographic sizes, thus

there is evidence to display, that the Census Department, had made an incorrect evaluation of the demographic sizes of the category(ies), deserving reservation. In sequel, thereupon alone, the census statistics which became borne in mind, while carrying out the de-limitation exercise besides for creating a reservation roster, but may have lead this Court to make an interference with the election programme.

17. However, when the said evidence is amiss, thereupon, the reservation roster as created in terms of the demographic sizes of the categories deserving endowments of reservation in the wards concerned, rather is to be deemed to be aptly drawn.

18. Reiteratedly, since all (supra) has been done in accordance with law, besides has been ensued from adherence being made to the rules of natural justice. Moreover, when supra have ensued from prima facie, no breach being made to the principles (supra). In addition, reiteratedly when in terms of the population sizes of the deserving categories, assignments of reservation in terms of the drawn reservation roster, thus has been endowed to them qua the apposite wards. Consequently, reiteratedly therebys, the parameters relating to even the creation of reservations vis-a-vis the deserving categories, thus in terms of their increased size of population in the wards concerned, but has also been well borne in mind, by the respondents concerned. As such therebys too, no fault can be found in the impugned notification.

19. Now, bearing in mind, the expostulation of law declared by the Apex Court in case titled as ***Kishan Singh Tomar vs. Municipal corporation of City of Ahmedabad and others***, reported in (2006) 8

Pradesh and another, reported in ***(2022) 12 SCC 770***, wherein, in the relevant paragraphs thereof, paragraphs whereof are extracted hereinafter, thus becomes pointedly established, the trite pointed statement of law, that the ongoing activity of de-limitation or formations of wards, rather may not be relevant consideration to detain the announced election programme by the State Election Commission, in respect to elections of local bodies, as and when the said elections become due much less overdue.

[Kishan Singh Tomar's case (supra)]

“21. In terms of Article 243 K and Article 243 ZA (1) the same powers are vested in the State Election Commission as the Election Commission of India under Article 324. The words in the former provisions are in pari materia with the latter provision.

22. The words, 'superintendence, direction and control' as well as 'conduct of elections' have been held in the "broadest of terms" by this Court in several decisions including in Re : Special Reference No. 1 of 2002 (2002) 8 SCC 237 and Mohinder Singh Gill's case (1978) 1 SCC 405 and the question is whether this is equally relevant in respect of the powers of the State Election Commission as well.”

[Suresh Mahajan vs. State of Madhya Pradesh and another]

“11. In any case, the ongoing activity of delimitation or formation of ward cannot be a legitimate ground to be set forth by any authority much less the State Election Commission - to not discharge its constitutional obligation in notifying the election programme at the opportune time and to ensure that the elected body is installed before the expiry of 5 (five) years term of the outgoing elected body. If there is need to undertake delimitation - which indeed is a

continuous exercise to be undertaken by the concerned authority - it ought to be commenced well-in-advance to ensure that the elections of the concerned local body are notified in time so that the elected body would be able to take over the reigns of its administration without any disruption and continuity of governance (thereby upholding the tenet of Government of the people, by the people and for the people). In other words, the amendment effected to the stated enactments cannot be reckoned as a legitimate ground for protracting the issue of election programme of the concerned local bodies.

15. We once again reiterate that the process of delimitation work and/or triple test compliance is a continuous, complex, time consuming and more so without any timeline (directly linked to the expiry of the term of the outgoing elected body). Whereas, the conduct of elections for installing newly elected body to take over the reins from the outgoing elected representative whose term had expired, is explicitly provided for by the Constitution and the relevant enactments. Therefore, the former need not detain the issue of election programme by the State Election Commission, in respect of local bodies as and when it becomes due much less overdue, including where the same is likely to become due in the near future.

30. We once again make it clear that if delimitation is not done by the State Government in terms of Amendment Act(s) of 2022 or the triple test requirement is completed “in all respects” for providing reservation to OBC category, the State Election Commission shall give effect to this order also in respect of upcoming elections of local bodies which would/had become due by efflux of time.

31. We also make it clear that this order and directions given are not limited to the Madhya Pradesh State Election Commission/State of Madhya Pradesh; and Maharashtra

State Election Commission/State of Maharashtra in terms of a similar order passed on 04.05.2022, but to all the States/Union Territories and the respective Election Commission to abide by the same without fail to uphold the constitutional mandate.”

20. Moreover, when the learned State Counsel has also placed on record the copy of the order dated 08.12.2024, as made by the State Election Commission, Punjab, whereby, the schedule for the elections to various Municipal Corporations, Councils, and Nagar Panchayats, in the State of Punjab, thus has been announced. Therefore, the breaches, if any, to the Rules (supra) by the competent authority in the latter making de-limitation of wards also thus cannot undo the announced election programme.

21. Additional support to the above finding becomes lent by the decision recorded by this Court in case titled as **Beant Kumar alias Beant Kinger Vs. State of Punjab and Others**, to which **CWP-PIL-142 of 2024** becomes assigned, wherein, the hereinafter extracted operative part has been rendered, thus on a controversy similar to the instant one, especially, when the said judgment has been upheld by the Apex Court vide order dated 11.11.2024, as made upon, in case titled as **The State of Punjab and Others Vs. Beant Kumar and Another**, to which **SLP (Civil) Nos. 26468-26469 of 2024** became assigned.

4.1 The upshot of the aforesaid discussion is that this Court has no hesitation in issuing a writ of mandamus directing the State Election Commission, Punjab, and the State of Punjab to forthwith comply with the constitutional mandate and initiate the process of holding elections by notifying election programmes in all the Municipalities and

Municipal Corporations in question within 15 days from the date of this order without conducting the fresh exercise of delimitation.

Final Order of this Court.

22. In aftermath, this Court finds no merit in the writ petition and with the observation(s) aforesaid, the same is dismissed.
23. Since the main case itself has been decided, thus, all the pending application(s), if any, are disposed of as such.

(SURESHWAR THAKUR)
JUDGE

17.12.2024

ithlesh

Whether speaking/reasoned

Whether reportable

:
:

Yes/No
Yes/No