



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-PIL-142 of 2024(O&M)
Decided On:14.10.2024

Beant Kumar alias Beant Kinger

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP-PIL-1 of 2024(O&M)

Parbodh Chander Bali

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL, JUDGE

Present: Mr. Bhisham Kinger, Advocate
for the petitioner (in CWP-PIL-142 of 2024)

Ms. Sunaina, Advocate
for Mr. H.C.Arora, Advocate, for the petitioners
(in CWP-PIL-1-2024)

Mr. Gurminder Singh, Advocate General, Punjab
with Mr. Saurav Khurana, Addl.A.G, Punjab.

ANIL KSHETARPAL, JUDGE

1. Brief facts of the case:

1.1 With the consent of the learned counsel representing the parties,
two connected writ petition shall stand disposed of by this common order.

1.2 A short but important issue that requires adjudication is



'whether it is permissible to delay the holding of elections of Municipalities/Municipal Councils/Municipal Corporations/Nagar Panchayats on account of pending exercise of delimitation of wards?'

1.3 It is not disputed by the learned counsel representing the parties that election to the following Municipalities/ Municipal Councils/ Municipal Corporations/ Nagar Panchayats is due after the date of expiry of five years:-

Election due Municipalities

Sr.No.	Name of the Municipal Corporation/Municipal Council-Nagar Panchayat	Date of Expiry of term of 5 years
1	2	3
	MUNICIPAL CORPORATION	
1	Phagwara	10.03.2020
2	Amritsar	21.01.2023
3	Patiala	22.01.2023
4	Jalandhar	24.01.2023
5	Ludhiana	26.03.2023
	MUNICIPAL COUNCIL-NAGAR PANCHAYAT	
1	Nadala	08.03.2020
2	Sanaur	08.03.2020
3	Rampura Phul	13.03.2020
4	Dera Baba Nanak	08.03.2020
5	Sardulgarh	08.03.2020
6	Sangrur	09.03.2020
7	Machhiwara	31.12.2022
8	Maloud	31.12.2022
9	Mullanpur Dakha	01.01.2023
10	Handiaya	02.01.2023
11	Talwandi Sabo	02.01.2023
12	Dhilwan	03.01.2023
13	Begowal	03.01.2023
14	Bhulath	03.01.2023
15	Sahnewal	03.01.2023



16	Dharamkot	03.01.2023
17	Balachaur	03.01.2023
18	Fatehgarh Panjtoor	04.01.2023
19	Narot Jaimal Singh	07.01.2023
20	Ghagga	07.01.2023
21	Ghanaur	07.01.2023
22	Khanaun	07.01.2023
23	Moonak	07.01.2023
24	Khemkaran	07.01.2023
25	Bagha Purana	07.01.2023
26	Amloh	07.01.2023
27	Makhu	07.01.2023
28	Mahilpur	07.01.2023
29	Bilga	07.01.2023
30	Goraya	07.01.2023
31	Shahkot	07.01.2023
32	Mallanwala Khas	08.01.2023
33	Dirba	09.01.2023
34	Raja Sansi	14.01.2023
35	Cheema	21.01.2023
36	Bariwala	21.01.2023
37	Bhikhi	01.02.2023
38	Bhogpur	14.02.2023
39	Tarn Taran	08.03.2020
40	Gharuan	Newly constitute
41	Baba Bakala	Newly constitute
42	Devigarh	Newly constitute

2. **Submissions of the learned counsel representing the parties:**

2.1 The learned Advocate General, Punjab, has submitted that the department is required to constitute Delimitation Boards for each Municipality for conducting door to door survey, preparation of rough maps and delimitation thereon. It was further stated that the Delimitation Boards for 44 out of 47 Municipalities have been constituted and the process of



constitution of three Municipalities, namely, Municipal Corporation, Jalandhar, Municipal Council, Talwara and Nagar Panchayat Bhadso will be issued very soon.

2.2 During the course of hearing, the learned Advocate General, Punjab has submitted that total period of sixteen weeks is required for completing the entire process of delimitation of wards. He has also submitted that the previous attempt to carry out delimitation was quashed on 17.10.2023, in **Rajesh Kumar Sharma and others vs. State of Punjab and others, and other connected cases (CWP No.7548 of 2023)**. Hence, it is necessary to carry out the fresh delimitation of wards. He also informed that the judgment in **Rajesh Kumar Sharma's case (supra)** is challenged in SLP (Civil) No.25229-25231 of 2023 by the State of Punjab, which is pending.

3. **Analysis and Discussion**

3.1 Having heard the learned counsel representing the parties, this Court now proceeds to analyze and evaluate the submissions.

3.2 The argument of the learned Advocate General, Punjab, is erroneous because in **Rajesh Kumar Sharma's case (supra)**, one of the grounds on which the fresh process of delimitation was set aside was that the delimitation process had already been sanctioned on 31.03.2021, and without any justification fresh process had been initiated. While concluding in sub-para (ii) of para 28, the court held that there is not a single digit increase in the population nor there is any alteration in the Municipal Limits necessitating the fresh delimitation.

3.3 As regards the second objection, the Constitution Bench of the Supreme Court has already answered the same against the State.



3.4 On careful reading of the judgment passed in **Rajesh Kumar Sharma's case (supra)**, it is evident that with respect to the Municipal Council, Dera Baba Nanak, delimitation of wards was sanctioned vide notification dated 31.03.2021. Thereafter, notification was also issued for holding the Municipality elections on 31.05.2021. However, without any justifiable reason, the Government started process of fresh delimitation subsequently. The Bench in the said case concluded as under:-

“28. As an upshot of above discussion, we hold that the entire delimitation exercise, since inception, in Municipal Councils of Dera Baba Nanak, Dharamkot and Municipal Corporation Phagwara impugned in CWP Nos.7548, 17204 and 16079 of 2023 respectively is conducted on irrelevant consideration and by committing glaring breach of Rules 3 to 8 of the Rules of 1972. As such, the entire delimitation exercise is declared to be illegal. Once we have declared the entire delimitation exercise from the very beginning having not been conducted validly, subsequent notifications issued on the basis of such delimitation cannot survive either. As such, notifications dated 27.01.2023, 18.01.2023 and 05.09.2023 are declared invalid having no force of law. The delimitation process under challenge is set aside on the following grounds:-

- (i) The constitution of the Delimitation Board is done in clear violation of Rule 3 of the Rules of 1972.



Five members from various political parties and groups in the composition of the Municipality were not associated in the Board, which has disturbed the level playing field.

- (ii) The impugned delimitation exercise is set aside as the same is done by respondent No.5 and not by the Delimitation Board under rule 4 of the Rules of 1972. Further, the number of wards and total population is identical i.e. 13 wards and population of 11197 and neither there is a single digit increase in the population nor is there any alteration of municipal limits, necessitating the fresh delimitation. Thus, we hold that the impugned delimitation would not be valid as per Rule 4 of the 1972 Rules.
- (iii) The principles enunciated under Rule 6 of the Rules of 1972 for delimitation of wards of Municipality i.e. determination of wards on the basis of geographical compactness, physical features, existing boundaries of administrative units, if any, facilities of communication and public convenience were not followed.
- (iv) The population survey by visiting door to door which is crucial for collecting the identifiable data for the purpose of reservation of wards was not



done and no such order was passed by respondent No.2.

- (v) As per Rule 12 (e) of the Punjab Municipal General Rules, 1979, while issuing a notice for publication of the notification under Rule 8 of the Rules of 1972, 30 days' time is prescribed from the date of its publication for inviting objections or suggestions from the persons interested whereas in the present case, admittedly, only 7 days' time was given to do the same.
- (vi) The impugned notifications, which are under challenge in the writ petitions are issued without de-notifying or superseding the earlier notifications, which still have the force of law and therefore, for the same purpose, two notifications cannot be issued.

28.1. Consequently, CWP Nos.7548, 17204 and 16079 of 2023 are allowed in the above terms and following directions are issued:

- (i) The State Election Commission is at liberty to hold election to the Municipal constituencies (wards) as it existed before the impugned delimitation exercise (which resulted into issuance of notifications dated 27.01.2023, 18.01.2023 and 05.09.2023) in the first fortnight of the November



as intended by the State Government vide notifications dated 01.08.2023 and 05.10.2023.

- (ii) As per the information given by the learned State counsel, process of revision and finalization of the electoral roll is underway. Therefore, the State Election Commission is at liberty to conclude the revision/finalization of the electoral rolls and issue appropriate notification for conducting elections to local bodies by giving schedule of election, providing dates for filing nomination papers, scrutiny of nomination papers and voting etc.”

3.5. In the Special Leave petition filed by the State of Punjab against the aforesaid judgment, the Supreme Court while issuing notice did not grant any interim protection.

3.6 Article 243E and Article 243U of the Constitution of India respectively provide for duration of Panchayats etc. and Municipalities which are extracted as under:-

243E. Duration of Panchayats, etc.

(1) Every Panchayat, 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.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat



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 Panchayat 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 Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

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

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.”

3.7 It is evident that the mandate of Articles 243E and 243U is crystal clear, as delineated by the Constitution Bench in **Kishan Singh**

Tomar vs. Municipal corporation of City of Ahmedabad and others,



(2006) 8 SCC 352. It has been specifically held that the process of delimitation cannot be made the ground to withhold the election process. In Suresh Mahajan vs. State of Madhya Pradesh and another, (2022) 12 SCC 770, the Supreme Court issued directions not only to Madhya Pradesh State Election Commission or State of Madhya Pradesh but to all the States/Union Territories to abide by the constitutional mandate enshrined in Articles 243E and 243U.

3.8 The constitutional mandate requires that elections to constitute a Municipality shall be held before the expiration of a period of six months from the date of its dissolution as per Article 243U (3)(b). According to this mandate, elections to the Municipalities must be completed before the end of their five-year term. Article 243U(3)(b) provides the maximum time limit for holding elections, stipulating that elections must take place within six months from the date of dissolution of the Municipality.

3.9 A Constitution Bench in Kishan Singh Tomar's case (supra), in para 21 and 22 held as under:-

“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.”

3.10 Similarly, in **Suresh Mahajan's case (supra)**, in para 11, 15, 30 and 31, the Supreme Court held as under:-

“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.”

3.11 Subsequently, in a similar matter, vide order dated 04.05.2022, reported in 2022 (12) SCC 798, the Apex court again reiterated as under:-

“9. Accordingly, the election programme of such local bodies must proceed and the State Election Commission is obliged to notify the election programme within two weeks from today in respect of such local bodies including to continue with the process from the stage as on 10.3.2022, on the basis of the delimitation done prior to coming into force of the Amendment Act(s) w.e.f. 11.03.2022. In other words, the delimitation as it existed prior to 11.03.2022 in respect of concerned local bodies be taken as notional delimitation for the conduct of overdue elections and to conduct the same on that basis in respect of each of such local bodies.”

3.12 Hence, the issue before this Court is no longer res-integra. It is fairly settled. Therefore, the Court is guided by established precedents and does not need to revisit the fundamental legal principles, but rather apply them to the present case.

4. Decision:

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.

4.2 With these observations, both the writ petitions are allowed.

4.3 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

October 14, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No