Rakesh Sharma Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 17, 2009

Acts Referred: Delimination of Wards of Municipalities Rules, 1972 â€" Rule 4, 6, 7, 8
Punjab Municipal Act, 1911 â€" Section 12(3)

Citation: (2009) 2 ILR (P&H) 352 : (2009) 2 RCR(Civil) 426

Hon'ble Judges: Tirath Singh Thakur, C.J; Hemant Gupta, J

Bench: Division Bench

Advocate: S.P. Jain, Dheeraj Jain and Vivek K. Thakur, in C.W.P. No. 15968 of 2008, for the Appellant; Madhu Dayal, A.A.G., Madhu P. Singh, for Respondent No. 2, P.K. Gupta, for Respondent No. 3, Arun Bansal and Madhu Dayal, Additional Advocate General for Respondents No. 1 to 3 in C.W.P. No. 15968 of 2008, for the Respondent

Final Decision: Allowed

Judgement

Hemant Gupta, J.
The challenge in Civil Writ Petition No. 15244 of 2005 is to the notification, dated 1st September, 2005, Annexure P-

3, creating different wards and fixing the number of persons to be elected from the said wards under the Delimination of Wards of Municipalities

Rules, 1972 (hereinafter to be referred as ""the Rules"").

2. The Petitioner has alleged that in year 1993, Nangal Township was provided with a Municipal Council. Prior thereto, there was a Notified Area

Committee. In the elections held in November, 1994, the Petitioner was elected as a member of the Municipal Council, Nangal, from one of its

seventeen wards. In June, 2000, again the elections were held for 17 wards. The Petitioner did not contest the elections. It is the case of the

Petitioner that elections to Municipal Council, Nangal, arc due in November, 2005 but the State of Punjab has decided to increase the number of

wards of Municipal Council, Nangal, from 17 to 19. It is the case of the Petitioner that, as per census of 2001, the population of urban area of

Nangal is 46694, whereas, as per information collected by the staff of the Municipal Council, Nangal, the population is 38332.

3. It is alleged that the Delimination Board constituted under the Rules recommended its proposal for delimitation of wards. Such proposal was

notified by the State Government and objections thereto were invited. 21 objections were filed but no weightage was found in any of the

objections. But on 8th August, 2005, the Additional Secretary in the department of Local Self Government got a note recorded that it has come to

their notice during discussion that the numbering of the wards has been done from North-East instead of North-West and they decided to change

the numbering from North-West. It is the case of the Petitioner that such change was contrary to recommendations of the Delimitation Board and

without inviting any fresh objections to the proposed change. It is contended that such change was made effective at the instance of local Member

of Legislative Assembly belonging to the then ruling party, whereas the Petitioner is a member of BJP, then in opposition. It is pleaded that the

change was effected so as to reserve the ward for women, from which the Petitioner was to contest the election. Such change has been effected

with mala fide consideration and because of undue influence and pressure exerted by Respondent No. 3 on Respondent No. 1.

4. In reply, apart from denying the allegations levelled by the Petitioner, it was pleaded to the following effect:

It may be clarified here that before the ""final order"", as provided u/s 9 of 1972 Rule was published in official gazette, it was noticed that

Delimitation Board"" while allocating/making numbering of wards has committed an error by awarding numbers by following route starting from

North-East whereas as per the established principle followed by the department, the numbering is made by starting from the north boundary of the

city towards the western boundary i.e. clock wise. Accordingly, to bring uniformity in the process of awarding number to the wards of

Municipality, it was decided to award numbers by starting from northern-west boundary of city and thence moving towards the northern-east

boundary. It is, however, clarified that numbering of wards was made in continuous process without any break until the numbering reached at the

starting point that is ward No. 1.

5. Almost on the similar lines is the reply of Respondent No. 2 and that of Respondent No. 3.

6. On October, 20, 2005, this Court passed an order restraining the commencement of election schedule for the election of Municipal Council,

Nangal. Subsequently, on December 5, 2006, the writ petition was admitted for final hearing with order to continue with the interim order.

Thereafter, Civil Writ Petition No. 15968 of 2008 has been filed wherein the Petitioner claimed a writ of mandamus for commanding the

Respondents therein to conduct the election to the Municipal Council, Nangal. In reply, it was pointed out that it was on account of the order

passed by this Court, elections cannot be conducted. Faced with the situation, it was ordered that both the writ petitions be listed for hearing

together. Thus, this order shall dispose of both the writ petitions.

7. Before considering the respective contentions, reproduction of Rules 6(f), 7 and 8 of the Rules is relevant, which read as under:

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

(a) to (e)xx xx xx xx xx

(f) In every Municipality, the Delimitation Board while drafting the Scheme for Delimitation of Wards, shall allot numbers to all wards having due

regard to the principle of contiguity:

Provided that the principle of rotation shall not be applicable where delimination of wards of a Municipality has been done under the provisions of

Clause (ii) of Rule 4 of the Rules.

Explanation: In this rule, the expression ""population"" mean the population as ascertain locally through the staff deputed by the Director by going

from door to door in the Municipality.

7. The Board shall, as soon as may be, after has prepared the Scheme for the delimitation of wards of the Municipality, send the same to the State

Government for consideration.

8. 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 or suggestions, if any, will be considered by it;

(c) consider all of 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.

8. We have heard learned Counsel for the parties. Mr. H.S. Sidhu, learned Additional Advocate General, Punjab, produced the record pertaining

to the consideration of objections and the publication of notification of delimitation of wards. The record shows that,--vide notification, dated 18th

June, 2004, the State Government determined the total number of elected members under Sub-section (3) of Section 12 of the Punjab Municipal.

Act, 1911 (hereinafter to be referred as ""the Act"") on the basis to 2001 Census figure. As per said notification, the population of Nangal, as per

2001 Census, was found to be 40694 with 19 seats of elected members. 9075 was the population of Scheduled Castes. The notification also

specified the number of seats reserved for women belonging to Scheduled Castes, number of seats reserved for women including seats reserved

for Scheduled Castes women candidates and number of seats reserved fro members of the Backward Classes. The said notification is not under

challenge in the present proceedings. It is also not disputed that the Delimitation Board made recommendations carving out wards as reflected in

red colour in the site plan, Annexure P-I. The said carving out of wards commenced from extreme North East corner of the. plan.

9. Though no rule, instructions or decision of the State Government has been produced to show that the numbering of the wards has to commence

from North-West corner of the lay out plan of the urban area but assuming the same to be correct, we still find that the stand of the State

Government in numbering of wards is not even as per their stated stand.

10. The extreme North West corner is, in fact, Ward No. 15 as per recommendations of the Delimitation Board, which has been numbered Ward

No. 17 by the State Government. Ward No. 14 by the Delimitation Board (No. 1 by the State Government) is next to Ward No. 15 and not on

extreme North West corner of the lay out plan. Therefore, the stand of the Respondents that ward number was assigned starting from North West

boundary of the city is not correct.

11. Still further, the record shows that consideration of the objections received in response to the publication of the recommendations of the

Delimitation Board was completed on 27th July, 2005. The same was approved by the Principal Secretary, Local Government on 8th August,

2008. It is also not in dispute that none of the objections pertained to numbering of the wards. It was only on 8th September, 2005, the proposal

was mooted to change the numbers of the ward for the reason that the numbering is to start from North West corner. Under Rule 7 of the Rules,

Delimitation Board is to send its recommendations to the State Government for consideration. Under Rule 8 of the Rules, the State Government is

required to publish the same in Government gazette for eliciting suggestions or objections from the affected members of the Municipal Council. A

date has to be fixed on or after which the Scheme along with objections or suggestions, if any, will be considered by the State Government and in

terms of Sub-clause (c) of Rule 8 of the Rules, all objections and suggestions are to considered before the date so specified. A co-joint reading of

Rules 7 and 8 of the Rules shows that the State Government has to publish the recommendations received from the Delimitation Board and

thereafter invite the objections and consider the same on the date specified. Once the objections have been considered, final notification

determining the delimitation of wards is required to be published.

12. In the present case, State Government published recommendations inviting objections within 10 days vide notification, dated 15th July, 2005.

Neither at the time of inviting objections or consideration thereof, the State Government found that numbering of wards is not proper, In these

circumstances, after the consideration of objections, if the State Government was of the opinion that numbering of wards is not proper, it was

expected to invite objections and suggestions again. Having not done so, we are of the opinion that the procedure adopted by the State

Government violates the principles of natural justice as none of the affected persons, objectors and the voters made aware of the change of ward

numbers. Thus we are of the opinion that notification, dated 1st September, 2005, Annexure P-3, suffers from patent illegality and irregularity and,

therefore, cannot be sustained in law.

13. Consequently, Civil Writ Petition No. 15244 of 2005 is allowed. Respondent No. 1 is directed to finalise the delimitation of wards in

accordance with law within two weeks of the receipt of certified copy of the order. Civil Writ Petition No. 15968 of 2008 is allowed with a

direction to the Respondents to conduct the election as expenditiously as possible, preferably within a period of three months from today.