

(2014) 12 RAJ CK 0200

Rajasthan High Court (Jaipur Bench)

Case No.: .C.W.P. Nos. 9169, 12164, 12324, 12462, 12760, 12763, 12770, 12829, 12872, 12879, 12890, 12901, 12909, 12926, 12928, 12929, 12940, 12945, 12946, 12955, 12960, 12994, 12995, 13064, 13103, 13114, 13124, 13133, 13163, 13164, 13168, 13171, 13172, 13173, 13

Bhupendra Pratap Singh Rathore

APPELLANT

Vs

State of Raj.

RESPONDENT

Date of Decision: Dec. 18, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 226, 243, 243B, 243C, 243E
- Rajasthan Panchayati Raj Act, 1994 - Section 10, 10(1), 10(2), 10(4), 101

Citation: AIR 2015 Raj 76 : (2015) 2 CDR 699**Hon'ble Judges:** J.K. Ranka, J; Ajay Rastogi, J**Bench:** Division Bench

Advocate: R.P. Singh, Senior Advocate assisted by S.K. Saini, Anoop Dhand, Tanveer Ahmed, Rakesh Kala, Vijay Pathak, Hanuman Choudhary, Laxmikant, Achintya Kaushik, S.S. Hora, Swaraj Panwar, Vijay Sharma, Mahendra Sharma, R.A. Katta, Sunil Kumar Singodia, Deepak Asopa, Rajendra Soni, J.K. Yadav, Ajay Gupta, Naina Saraf, Sanjay Verma, Naveen Dhuwan, V.S. Badhwar, Gayatari Rathore, I.R. Saini, S.S. Ola, P.K. Sharma, Lokendra Singh Shekhawat, Ravi Kumar Kasliwal, Harendra Singh Sinsinwar, Sanjay Buri, Rajeev Sogarwal, C.M. Verma, Mahesh Gupta, Suresh Kumar Pareek, Arvind Bhardwaj, Madhav Mitra, S.K. Jain, P.C. Devanda, Anil Gupta, Gajendra Singh Rathore, Praveen Sharma, Manish Gupta, Rajendra Prasad Sharma, Karan Pal Singh, M.I. Khan, Rakesh Kumar, Ramavatar Bochlya, S. Khan, Sanjay Mehrishi, Amit Jindal, Gaurav Gupta, S.S. Shekhawat, S.K. Mahala, D.D. Khandelwal, M.S. Kachhawa, Vivek Choudhary and J.R. Tantia, Advocate for the Appellant; Anurag Sharma, Addl. Advocate General, R.B. Mathur and R.P. Garg, Advocate for the Respondent

Judgement

Ajay Rastogi, J.

Instant bunch of writ petitions involves a common issue and question of law, therefore, are being considered and decided by this common order.

2. In this bunch of writ petitions, the petitioners have primarily called in question constitution/reconstitution/delimitation of the respective Panchayat areas; formation of Panchayati Raj Institutions; change of headquarters of Gram Panchayats; and amalgamation & alteration of respective Panchayat areas on the ground that such action/steps have been taken in contravention of the guidelines issued by the State of Rajasthan, Department of Panchayati Raj and the circulars issued by the State Government u/S. 101 of the Rajasthan Panchayati Raj Act, 1994 Dt. 11.07.2014 read with Dt. 21.07.2014 & Dt. 12.09.2014, have not been complied with in true spirit and after going through the procedure provided under the scheme of Act, 1994 and the process of constitution/reconstitution/delimitation of the Panchayati Raj Institutions being finalized by the State Government, the Notification issued u/S. 101 of the Act, 1994 and published in the official gazette Dt. 05.11.2014 is constitutionally invalid and deserves to be quashed and set aside.

3. The facts in brief which are relevant for the present purpose and for disposal of the instant bunch of writ petitions are that the process of delimitation lastly took place in the State of Rajasthan, as referred to by the respondents in their reply, way back in the year 1994 and thereafter, due to various reasons, delimitation of Panchayati Raj Institutions became inevitable and on account of increase in population, pursuant to publication of census figures i.e. Census-2011, it was decided by the State Government, Department of Panchayati Raj to undertake fresh delimitation exercise of the Panchayat areas by issuing a notification Dt. 02.06.2014 whereby District Collectors of the concerned Districts were delegated the powers to initiate process u/Ss. 9, 10 & 101 of the Act, 1994 and pursuant thereto, vide circular Dt. 11.07.2014, the District Collectors were authorized for re-constituting/constituting Panchayat boundaries of the Panchayat Samitis and in continuation thereof a further clarification was issued clarifying the parameters/guidelines vide another circular Dt. 21.07.2014 and instructions were issued by the State Government to all the District Collectors to consider various inputs and published the draft of proposed changes with regard to constitution/re-constitution of Panchayati Raj Institutions inviting objections, if any, and proceeding upon the instructions and submit their recommendations to the State Government through Divisional Commissioner concerned. All the objections so received within the prescribed time period, as alleged, were considered and deliberated upon by the District Collectors and the matters were thereafter submitted to the State Government through Divisional Commissioner concerned and that were examined by the State Government through a committee of three Cabinet Ministers and after going through the recommendations, the process of delimitation was finalized by the State Government and the notification, as required u/S. 101 of the Act, 1994, came to be published in the official gazette Dt. 05.11.2014.

4. In majority of writ petitions, the notification Dt. 05.11.2014, published in the Rajasthan Extra-Ordinary Gazette in exercise of powers conferred u/Ss. 9, 10 & 101 of the Act, 1994 is a subject matter of challenge. However, in few writ petitions, the

proceedings which are undertaken by the District Collectors prior thereto and after deliberation, recommendations sent by the District Collectors to the State Government through Divisional Commissioners is under challenge but the fact still remains that after the recommendations were sent by the District Collectors to the State Government through the Divisional Commissioners and after the matter being examined by the State Government through a committee of three Cabinet Ministers and the process of delimitation stands finalized and notified in exercise of powers conferred u/Ss. 9, 10, 101 of the Act, 1994, questioning the recommendations made by the District Collectors, as in one of the Writ Petition No. 12960/2014 where the recommendations of the District Collector, Ajmer is under challenge, may lose its significance after constitution/reconstitution/delimitation notification has been published in the official gazette vide notification Dt. 05.11.2014.

5. Originally, the instant bunch of writ petitions came to be filed before the Id. Single Judge, primarily assailing the gazette notification Dt. 05.11.2014 for delimitation/constitution/re-constitution of various Panchayat circles situated in different Districts of the State of Rajasthan and amalgamation/alteration of respective Panchayat areas. However, simultaneously bunch of writ petitions came to be filed at the Main Seat, Jodhpur, the State Government raised objection that after issuance of the notification Dt. 05.11.2014 constituting/reconstituting/delimiting Panchayat Circles in exercise of powers conferred u/Ss. 9, 10 & 101 of the Act, 1994 is legislative in character and cannot be heard by the Single Bench of this Court and the Id. Single Judge before the Main Seat, Jodhpur in bunch of writ petitions vide order Dt. 05.12.2014, while holding the issuance of impugned notification Dt. 05.11.2014 being legislative in character, directed the Registry to place the matter before the Division Bench. Keeping in view, order of the Id. Single Judge, making reference to the Division Bench of this court before the Main Seat, Jodhpur vide order Dt. 05.12.2014, the Id. Single Judge of this court, also referred the instant bunch of matters to the Division Bench of this court but prior thereto taking note of various objections in the process adopted by the respondent-State, while issuing the final notification Dt. 05.11.2014, the Id. Single Judge vide order Dt. 27.11.2014 observed that the State Government may examine the matters on limited aspect as to whether the deviation has been made to the extent of more than 25% in the matter of population and distance in breach of its policy guidelines and consider re-drawing the limitation of the Gram Panchayats on the lines of its own policy circulars. In the short time, specific reply could not be filed but counsel for the State placed a communication Dt. 08.12.2014, addressed to Additional Advocate General to the effect that in compliance of order of the Id. Single Judge Dt. 27.11.2014 followed with order Dt. 03.12.2014, communication has been sent to all the District Collectors and it can be apprised that they are not able to find deviation of more than 25% in the matter of population and distance in breach of the policy guidelines. Under the guidelines issued by the State Government, to be kept in mind for constitution/reconstitution/delimitation of the

panchayat areas, for the purpose of Gram Panchayats, the minimum and maximum population should be 5,000 and 7,500 respectively and looking to the administrative exigencies other villages can be joined in a Gram Panchayat provided their distance with the proposed Headquarters of the Gram Panchayat is not more than 8 KMs. It was also indicated that for reorganization/creation/alteration of Gram Panchayats, the time schedule fixed for the District Collector to prepare proposal is within 30 days i.e. from 14.07.2014 to 12.08.2014 and proposal should be published u/S. 101 of the Act, 1994 within 30 days thereafter i.e. from 13.08.2014 to 11.09.2014 and in respect of draft proposal, objections should be heard in 10 days i.e. from 12.09.2014 to 21.09.2014 and after hearing the objections, final proposals should be sent to the Divisional Commissioner from 22.09.2014 to 01.10.2014 in the next 10 days and further approval of the State Government would be sought in 14 days thereafter i.e. from 02.10.2014 to 15.10.2014 and this was followed by another circular Dt. 14.07.2014 where minor corrections were made, calling objections from all the sectors. Further guidelines were published vide order Dt. 21.07.2014 mentioning that Headquarters of newly created Gram Panchayat would be kept in revenue village which has maximum population and which can easily have connectivity with other villages. It is not the case of either of the petitioners that objections were not invited or adequate time was not afforded for submitting objections or the time schedule, adhered to under the circulars, has not been followed by the respondent-State while final decision has been taken for publication of the notification Dt. 05.11.2014 regarding constitution/reconstitution/delimitation of panchayat areas/circles across the State of Rajasthan.

6. It can be noticed by this court that while aforesaid exercise was in process, various writ petitions came to be preferred questioning constitution/reconstitution/delimitation of panchayat areas/circles u/S. 101 of the Act, 1994 as the State Government in exercise of powers conferred u/S. 101(6) of the Act, 1994 issued instructions under order Dt. 11.07.2014 to all the District Collectors regarding procedure to be adopted for fresh delimitation of panchayats u/S. 101 of the Act, 1994 and the objections which were submitted by the persons or the writ petitioners, as the case may be, have not been considered to their satisfaction and the District Collectors have not complied with the instructions issued in the circular Dt. 11.07.2014 followed with circular Dt. 21.07.2014 mandating hearing of the objectors before making recommendations to the Divisional Commissioner for onward communication to a special committee of three Cabinet Ministers and the process of notifying newly delimited panchayats without consideration of objections is adversely affecting the rights of the petitioners. After hearing the parties, such of the writ petitions came to be dismissed by the Id. Single Judge of this court by one of the order placed for our perusal Dt. 31.10.2014.

7. It is also brought to the notice of the court by the State Election Commission that it has started the process and the electoral rolls are in the process of finalization and since five years term is going to be complete, it is necessary to conduct upcoming

elections of the Panchayati Raj Institutions before 23.01.2015 and for that purpose, the Commission has prepared the schedule of tentative election programme, copy whereof is placed on record as Ann. RE-2.

8. At the outset, it may be noticed that in majority of writ petitions, the notification which is legislative in nature is subject matter of challenge but as already observed in few writ petitions, notification has not been challenged but the process adopted by the District Collectors and particularly, as pointed out to this court, by the District Collector, Ajmer, in making recommendations which is finally examined by the committee of three Cabinet Ministers and thereafter delimitation is finalized by the State Government, the process adopted by District Collectors may not remain that relevant which the petitioners have questioned in the writ petitions and their grievance is that the broad guidelines which were made available to the District Collectors regarding overall population, distance and change of headquarters of Gram Panchayat have not been properly examined by the District Collectors and in breach of policy guidelines, recommendations are made and that are in contravention of the guidelines issued by the State Government Dt. 11.07.2014 & Dt. 21.07.2014.

9. The respondents filed reply and apart from merits, have also raised preliminary objections and tried to justify that all the objections, so received within the prescribed time period were duly considered by the District Collectors and the proposals for constitution/reconstitution/delimitation of Gram Panchayats/Panchayat Circles were thereafter submitted to the State Government through Divisional Commissioners and the same were examined by the State Government through a committee of three Cabinet Ministers constituted for the purpose and after consideration of the proposals/recommendations, the process of constitution/reconstitution/delimitation of Panchayati Raj Institutions was finalized by the State Government and thereafter the notification u/S. 101 of the Act, 1994 came to be issued and published in the official gazette Dt. 05.11.2014.

10. At the same time, preliminary objection has been raised by the respondents, regarding maintainability of the writ petitions and counsel submits that the notification Dt. 05.11.2014 is in the form of legislative act and in view of the bar contained in Art. 243-O(a) of the Constitution, validity of any law relating to delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made u/Art. 243-K of the Constitution, cannot be called in question in any court and further submits that apart from the constitutional mandate, S. 117 of the Act, 1994 puts a bar to interference by courts in the matters relating to delimitation of constituencies.

11. Counsel submits that the process of delimitation and exercise undertaken by the State Government is a legislative act and that being so, the present writ petitions which have been preferred seeking judicial review u/Art. 226 of the Constitution of India are not maintainable.

12. Counsel submits that process of delimitation and consequent publication of gazette notification Dt. 05.11.2014 being a legislative act and, therefore, the question as to whether the objections were considered in detail or not, cannot now be permitted to be raised in writ jurisdiction of this court u/Art. 226 of the Constitution and further submits that the power exercised by the State Government u/Ss. 9, 10 & 101 of the Act, 1994 is not subject to the rules of natural justice any more than its legislature itself as the procedural requirement of hearing is not implicit in exercise of legislative power unless hearing is expressly prescribed and in the present facts & circumstances, the judicial review of delimitation of the Panchayat areas/circles, as notified in the official gazette Dt. 05.11.2014, is not in the realm of judicial review, to be considered u/Art. 226 of the Constitution.

13. Counsel further submits that inclusion of certain areas and constitution of new Gram Panchayat/Panchayat Samiti is a legislative function and there is no question of malafide in power exercised by the State Government and the instructions issued by the State Government to all the District Collectors and broad guidelines, which are to be kept in mind while the proposals are being sent after inviting objections to be considered by the Committee constituted by the State Government of three Cabinet Ministers and after the final recommendations are made, that came to be notified u/S. 101 of the Act, 1994 vide gazette notification Dt. 05.11.2014.

14. Counsel submits that the instructions issued by the State Government from time to time and the provisions of law including Art. 243-C of the Constitution in fact are to be followed by all the District Collectors during the process adopted for delimitation, so far as practicable, keeping in view the larger public interest and administrative exigencies and also looking to the density of population & distance of villages, which is without any element of malice, is not open to challenge u/Art. 226 of the Constitution of India.

15. As regards order initially passed by the Id. Single Judge taking note of general objections raised by the counsel and noticed in the order Dt. 27.11.2014 to examine as to whether deviation has been made to the extent of more than 25% in the matter of population and distance in breach of the policy guidelines, which was to be examined and reported to this court, counsel submits that a formal reply to the order Dt. 27.11.2014 could not have been filed but the matter was examined by the State Government and on the basis of the report received from the concerned District Collectors, it can be recorded that in none of the case, there has been deviation to the extent of more than 25% in the matter of population and distance in breach of the policy guidelines and the matter was heard by this court on the preliminary objections raised by the respondents.

16. Mr. R.P. Singh, Senior Advocate, primarily argued the matter on behalf of all the writ petitioners, conceded in his submissions that he has not challenged validity of the gazette notification Dt. 05.11.2014. However, he has questioned the recommendations made by the District Collector, Ajmer and has tried to persuade

this court that the guidelines issued by the State Government Dt. 11.07.2014 read with Dt. 21.07.2014 have not been followed by the District Collector, Ajmer while the recommendations made are impugned in the writ petition and that according to him can certainly be examined by this court. However, rest of the counsel, have argued their cases and almost all of them have challenged the validity of gazette notification Dt. 05.11.2014.

17. As regards submissions made by senior counsel Mr. R.P. Singh, taking note of preliminary objections raised by the respondents regarding maintainability is concerned, it can be observed that submission to question the recommendations made by the District Collectors, primarily does not survive after the publication of gazette notification Dt. 05.11.2014 and indeed is a legislative act. Hence, the substantial question remains as to whether the gazette notification Dt. 05.11.2014 issued in exercise of powers conferred u/Ss. 9, 10 & 101 of the Act, 1994 is open for judicial review u/Art. 226 of the Constitution?

18. In this regard, let us first take note of 73rd amendment to the Constitution by which Part-IX consisting of Art. 243 to Art. 243-O have been introduced in the Constitution. Constitution of Panchayats has been prescribed u/Art. 243-B and duration of Panchayat which remain in force for a period of five years from the date appointed for its first meeting and no longer is regulated in terms of Art. 243-E and Art. 243-K regulates the elections of Panchayats which shall be vested in the State Election Commission for its superintendence, direction and control of the preparation of electoral rolls and conduct of all elections to the Panchayats and at the same time there is an absolute bar to interference by courts u/Art. 243-O examining the validity of any law relating to delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made u/Art. 243-K shall not be called in question in any court and at the same time, no election to any Panchayat 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 the State.

19. It is in the light of the aforesaid provisions of the Constitution that we have to examine the provisions of the Act, 1994. The State enactment, which is the Rajasthan Panchayati Raj Act, 1994, has been suitably amended to bring it in conformity with the amended provisions-73rd amendment of the Constitution. S. 2(1)(ii) of the Act, 1994 provides "Block" & "Panchayat Circle" which shall mean the local area over which a Panchayat Samiti or, as the case may be, a Panchayat exercises its jurisdiction. "Panchayat Area" & "Panchayat Circle" have also been defined u/S. 2(1)(xvi) which envisages the territorial area of a Panchayat.

20. At the same time, S. 9 of the Act, 1994 lays down establishment of Panchayat and S. 10 of the Act relates to the establishment of Panchayat Samiti. It is by a notification published in the official gazette, declaring any local area, comprising a village or a group of villages not included in a municipality or a cantonment board

which is constituted under any law for the time being in force be called a Panchayat Circle and for every local area declared as such there shall be a Panchayat and the same should be notified in the official gazette and such of the local area, within the same District to be a Block and for every Block declared as such, there shall be a Panchayat Samiti having jurisdiction, over the entire Block excluding such of the portions of the Block as are included in a municipality or a cantonment board constituted under any law for the time being in force and have its office in any area comprised within the excluded portion of the Panchayat Samiti and every Panchayat Samiti has to be notified in the official gazette.

21. S. 101 of the Act, 1994 envisages powers of the State Government for alteration of limits of Panchayati Raj Institutions and for undertaking the exercise of alteration of limits of Panchayat Institutions, the State Government has to issue a public notice to be published in the prescribed form and by notification in official gazette may declare whole or any part of the local area included within the limits of a municipality to be a Panchayat Circle; or include in a Panchayat Circle any such local area or a part thereof or, as the case may be, any local area included within the limits of another Panchayat Circle; or alter the limits of a Panchayat Circle by amalgamating one Panchayat Circle into another or by splitting up a Panchayat Circle into two or more Panchayat Circles; or excluding the whole or a part of any local area from a Panchayat Circle, whether on its ceasing to be a rural area or, as the case may be, for its being included within the limits of another Panchayat Circle and as regards validity of any law relating to the delimitation of constituencies or wards or the allotment of seats to such constituencies or wards, made or purporting to be made, there is a complete bar to interference by courts in such matters, as provided u/S. 117 of the Act, 1994.

22. It may be relevant to note Art. 243-O of the Constitution and so also S. 101 & S. 117 of the Rajasthan Panchayati Raj Act, 1994 which read ad infra:--

"Article 243-O. 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 243K, shall not be called in question in any court;

(b) no election to any Panchayat 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.?

At the same time, the relevant provisions under the Act, 1994, relevant for the purpose are quoted ad infra:--

"S.101. Alteration in the limits of a Panchayati Raj Institution: (1) The State Government may, at any time, after one month's notice published in the prescribed

manner either on its own motion or at the request made in this behalf, any by notification in the Official Gazette,-

(a) declare the whole or a part of any local area included within the limits of a municipality to be a Panchayat Circle; or

(b) include in a Panchayat Circle any such local area or a part thereof or, as the case may be any local area included within the limits of another Panchayat Circle; or

(c) otherwise alter the limits of a Panchayat Circle by amalgamating one Panchayat Circle into another or by splitting up a Panchayat Circle into two or more Panchayat Circles; or

(d) exclude the whole or a part of any local area from a Panchayat Circle, whether on its ceasing to be a rural area or, as the case may be, for its being included within the limits of another Panchayat Circle.

(2) - (7) XXX XXX XXX"

S.117. Bar to interference by courts in certain matters:

Notwithstanding anything in this Act,-

(a) the validity of any law relating to the delimitation of constituencies or wards or the allotment of seats to such constituencies or wards made or purporting to be made under this Act, shall not be called in question in any court; and

(b) no election to any Panchayati Raj Institution 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 this Act."

23. A plain reading of the provisions of the Constitution Art. 243-C, 243-K & 243-O, if read together with S. 101 & S. 117 of the Act, 1994 would go to show that delimitation of Panchayat area or the formation of constituencies in the said areas and allotments of seats to the constituencies could neither be challenged nor the court can entertain such challenge except on the ground that before delimitation, no objections were invited and no hearing was afforded, even though this challenge could not be entertained after the notification regarding delimitation came to be published in the official gazette. The law on the subject which has been declared by the Apex court is loud and clear and prohibits courts to entertain challenge in view of the Art. 243-C, 243-K and 243-O of the Constitution in respect of the above aspects and, therefore, the challenge raised by the petitioners pertaining to delimitation of Panchayat areas or that of formation of constituency in the said area as well as allotments of seats to such constituencies cannot be entertained by the courts since from the procedure followed and material available on record, it reveals that objections were invited from the persons and hearing was afforded to them and only thereafter the District Collectors, keeping in view the guidelines, examined the matter and made recommendations to the State Government through the

Divisional Commissioners.

24. Their Lordships of the Apex Court in [Meghraj Kothari Vs. Delimitation Commission and Others](#), observed, ad infra:--

"25. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the official gazettes of the States concerned, these matters could no longer be reagitated in a court of law. There seems to be very good reason behind such a provision. If the orders made under Sections 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the Legislature that the orders under Sections 8 and 9 published under s. 10(1) were to be treated as law which was not to be questioned in any court."

25. It has been examined by "the Apex Court in [State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.](#), which reads ad infra:--

46. What is more objectionable in the approach of the High Court is that although Clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in the connection, refer to a decision of this Court in *Maghraj Kothari v. Delimitation Commission & Ors.* In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Sections 8 and 9 of the delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or 9 of the Delimitation Commission Act and published under Section 10(1) of that Act C is not part of an Act of Parliament, its effect is the same. Section 10(4) of that Act puts such an order in the same position as a law made by the Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article

327 and Sections 2(kk), 11F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August, 1994."

26. Keeping in view the law laid down by the Apex Court, in our considered view, the gazette notification Dt. 05.11.2014 relating to delimitation of Panchayat area; or formation of constituencies in the said area; or allotments of seats to the constituencies is a legislative act in nature and could neither be challenged nor the court can entertain such challenge and in view of the law declared by the Apex Court, prohibiting courts to entertain challenge in view of Art. 243-C, 243-K and 243-O in respect of the above aspects, raised by the petitioners pertaining to constitution/reconstitution/delimitation of Panchayat areas under the gazette notification Dt. 05.11.2014 cannot be entertained by this court u/Art. 226 of the Constitution and the objection and contentions canvassed by the petitioners in view of Art. 243-C, 243-K read with 243-O coupled with law declared by the Apex Court, is wholly devoid of substance.

27. So far as the objection raised by counsel for petitioner that in the judgment cited by the Apex Court, as there was a clear prohibition of S. 10(2) of the Delimitation Act, the writ petitions are maintainable as the Delimitation Act is not applicable in the facts & circumstances of the instant case. The objections raised is of no substance for the reason that under 73rd amendment to the Constitution, while introducing Part-IX bar to interference by courts in electoral matters u/Art. 243-O(a) and corresponding amendments made in the Rajasthan Panchayati Raj Act, 1994 while functioning for delimitation/alteration of the Panchayati Raj Institutions are regulated in terms of S. 101 of the Act, 1994 and at the same time, there is a bar to interference by courts in the matters relating to delimitation of constituencies and wards u/S. 117 of the Act, 1994 and that being so, the principles laid down by the Apex Court are applicable in the facts & circumstances of the instant case and the gazette notification Dt. 05.11.2014 being a legislative act in nature and keeping in view the bar to interference in the matters relating to the delimitation of the constituencies u/Art. 243-O(a) of the Constitution and so also S. 117 of the Act, 1994, the submission made by the petitioner suffers lack of merit.

28. In our considered view, we find substance in the preliminary objections raised by the respondents which deserve worth acceptance and keeping in view the mandate of Art. 243-O(a) of the Constitution read with S. 117 of the Act, 1994, once a

notification of delimitation of constituencies Dt. 05.11.2014 has been published in the official gazette u/S. 101 of the Act, 1994, it has got the force of law and going by the effect of Art. 243-O(a), interference by courts in respect of delimitation of constituencies is barred. Such is the importance of the said notification and the non-obstante clause therein is important and become operative.

29. Consequently, all the writ petitions lack merit and being not maintainable accordingly stand dismissed. No costs.