

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B.Civil Writ Petition No.8157/2014

Mushe Khan & anr. V/s State of Rajasthan & ors.

Alongwith connected

D.B.Civil Writ Petition Nos.:-

7127/2014	8004/2014	8064/2014	8074/2014	8085/2014
8092/2014	8117/2014	8119/2014	8130/2014	8133/2014
8134/2014	8135/2014	8136/2014	8138/2014	8140/2014
8145/2014	8152/2014	8155/2014	8156/2014	8158/2014
8159/2014	8165/2014	8167/2014	8168/2014	8174/2014
8182/2014	8184/2014	8186/2014	8201/2014	8207/2014
8209/2014	8210/2014	8211/2014	8222/2014	8233/2014
8238/2014	8253/2014	8256/2014	8258/2014	8262/2014
8265/2014	8266/2014	8274/2014	8306/2014	8307/2014
8315/2014	8316/2014	8317/2014	8319/2014	8321/2014
8331/2014	8343/2014	8344/2014	8348/2014	8358/2014
8359/2014	8363/2014	8371/2014	8372/2014	8373/2014
8374/2014	8375/2014	8378/2014	8379/2014	8380/2014
8394/2014	8395/2014	8399/2014	8400/2014	8401/2014
8402/2014	8403/2014	8410/2014	8411/2014	8412/2014
8418/2014	8419/2014	8421/2014	8422/2014	8423/2014
8424/2014	8426/2014	8427/2014	8428/2014	8430/2014
8433/2014	8435/2014	8436/2014	8441/2014	8443/2014
8444/2014	8446/2014	8448/2014	8449/20174	8450/2014
8451/2014	8452/2014	8454/2014	8455/2014	8456/2014
8457/2014	8458/2014	8459/2014	8460/2014	8462/2014
8463/2014	8467/2014	8468/2014	8469/2014	8471/2014
8472/2014	8473/2014	8474/2014	8476/2014	8483/2014
8487/2014	8492/2014	8498/2014	8503/2014	8504/2014
8509/2014	8510/2014	8511/2014	8513/2014	8514/2014
8515/2014	8517/2014	8521/2014	8525/2014	8526/2014
8529/2014	8533/2014	8534/2014	8535/2014	8536/2014
8538/2014	8540/2014	8541/2014	8545/2014	8548/2014
8549/2014	8550/2014	8551/2014	8552/2014	8554/2014
8555/2014	8557/2014	8558/2014	8559/2014	8560/2014
8562/2014	8563/2014	8566/2014	8567/2014	8568/2014
8569/2014	8570/2014	8573/2014	8574/2014	8575/2014
8577/2014	8578/2014	8579/2014	8580/2014	8581/2014
8582/2014	8583/2014	8587/2014	8589/2014	8591/2014
8593/2014	8637/2014	8640/2014	8653/2014	8655/2014

8663/2014	8668/2014	8670/2014	8671/2014	8672/2014
8673/2014	8675/2014	8677/2014	8678/2014	8679/2014
8692/2014	8704/2014	8705/2014	8706/2014	8709/2014
8713/2014	8722/2014	8724/2014	8725/2014	8726/2014
8728/2014	8729/2014	8731/2014	8732/2014	8733/2014
8735/2014	8753/2014	8755/2014	8758/2014	8769/2014
8775/2014	8777/2014	8784/2014	8785/2014	8788/2014
8797/2014	8800/2014	8803/2014	8804/2014	8824/2014
8831/2014	8838/2014	8841/2014	8843/2014	8854/2014
8855/2014	8876/2014	8882/2014	8886/2014	8893/2014
8894/2014	8896/2014	8897/2014	8905/2014	8911/2014
8915/2014	8917/2014	8918/2014	8919/2014	8942/2014
8946/2014	8949/2014	8955/2014	8956/2014	8957/2014
8959/2014	8971/2014	9001/2014	9003/2014	9017/2014
9048/2014	9182/2014	9068/2014	9156/2014	9316/2014
8236/2014	8166/2014	8194/2014	9291/2014	-

&

D.B.Civil Special Appeal (Writ) No.1690/2014
State of Rajasthan & ors. V/s Mushe Khan & ors.

Date of Order:-

19.12.2014

PRESENT

HON'BLE ACTING CHIEF JUSTICE SUNIL AMBWANI
HON'BLE MR.JUSTICE PRAKASH GUPTA

Mr G.R. Punia, Mr M.R. Singhvi, Mr Rajesh Joshi, Dr Nupur Bhati, Mr Mahesh Bora, Mr Hemant Chaudhary, Mr Rakesh Arora, Mr Trilok Joshi, Mr O.P. Mehta, Mr Mohit Singhvi, Mr Ramesh Purohit, Mr Sachin Acharya, Mr Sandeep Shah, Mr Rajesh Chaudhary, Mr Kuldeep Mathur, Mr Kailash Khatri, Mr Bharat Devasi, Mr R.S. Chaudhary, Mr Parikshit Nayak, Mr Sambhoo Singh, Mr Vineet Dave, Mr.M.A.Siddiqui, Mr.Deepesh Beniwal, Mr.I.R.Choudhary, L.S.Jodha.

..... for the petitioners.

Mr N.M. Lodha, Adovcate General assisted by Mr Rajesh Panwar, Addl. Advocate General and Mr Vikas Balia, for the Rajasthan Election Commission.

.....for the respondents

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ORDER

(Reportable) BY THE COURT (Per Hon'ble Sunil Ambwani, Actg.CJ)

1. We have heard learned counsel appearing for petitioners, learned Advocate General for the State of Rajasthan and learned counsel appearing for the Rajasthan State Election Commission.

2. All the above numbered writ petitions with D.B.Civil Writ Petition No.8157/2014 (Mushe Khan & anr. V/s State of Rajasthan & ors.) as leading writ petition were filed before learned Single Judge challenging the Notification dated 5.11.2014 issued under the signatures of the Commissioner and Secretary, Gramin Vikas and Panchayati Raj (Panchayati Raj Department), Government of Rajasthan, Jaipur, by which the State Government had notified the alteration in the limits of Panchayats for which the concerned District Collectors were authorized under the Notification dated 2.6.2014 in exercise of the powers under section 98 of the **Rajasthan Panchayati Raj Act, 1994** (for short, "the Act of 1994") for reconstitution, de-limitation and creation of village Panchayats and Panchayat Samitis under sections 9, 10 and 101 of the Act of 1994. The District Collectors were authorized under sections 9, 10 and 101 of the Act of 1994 to examine the proposals and recommendations and to get them approved from the Divisional Commissioners before forwarding them to the State Government. In pursuance to the exercise carried out by the Districts Collectors under the

powers vested in them by Notification dated 2.6.2014, they had by the impugned Notification dated 5.11.2014, reconstituted, de-limited and created the Panchayats in the Schedule given in the Notifications, giving the names of such re-constituted, delimited and newly created Panchayats in column no.4, giving the names of the villages included in such village Panchayats in Column no.5, with directions to complete the election process within six months and with further directions that after the elections are held, those Panchayats, which are named in column no.2 will stop functioning and the village Panchayats named in column no.4, will start functioning.

3. In some of the writ petitions, learned Single Judge passed an interim order as follows:-

“In the meanwhile and until the next date, the State Government shall not finalise and notify the division of wards/constituencies of re-constituted/newly created Gram Panchayats and Panchayat Samities in question pursuant to the impugned Notification No.एफ.15(1) पुनर्गठन /विधि/ परावि /2014/1473 जयपुर, dated 05.11.2014.”

4. During the course of hearing before learned Single Judge, he examined the question as to whether the Notification issued by the State Government constituting/reconstituting and de-limiting Panchayat Circles in exercise of the powers conferred under sections 9, 10 and

101 of the Act of 1994 is legislative in character and if it is so, whether the present matters are cognizable by Single Bench or the same are required to be referred to the Division Bench, in pursuance of the general order passed by the then Hon'ble Chief Justice on 28.2.2011, which had specified that the cases challenging the vires of any Act or statute or any order or Rule or regulation made under any Act or statute, shall be heard by the Division Bench. By another order dated 18.3.2011 issued by the then Hon'ble Chief Justice, it was clarified that "any order" appearing in the order dated 28.2.2011 relates to "any order of legislative nature".

5. After hearing the parties, learned Single Judge held that in view of the decisions of the Supreme Court in Tulsipur Sugar Co.Ld. V/s The Notified Area Committee, Tulsipur (AIR 1980 SC 882) & Sunderjas Kanyallal Bhathija & Ors. V/s The Collector, Thane, Maharashtra & Ors. (AIR 1990 SC 261) and the judgment of this Court in M/s J.K.Synthetics Ltd. V/s Municipal Board, Nimbahera & Anr. (RLR 1989)2 589), the powers exercised by the State Government under section 4 of the Rajasthan Municipalities Act, 1950 are legislative in nature. The judgment in J.K.Synethetics Limited's case (supra) was followed in Gram Panchayat, Akarbhata & ors. V/s The State of Rajasthan & Ors. ((1992(2) WLN 37) and Mod Singh V/s State of Rajsthan & anr. (S.B.Civil Writ Petition No.6132/92) decided on 23.12.1994 and consequently, learned Single Judge held that the present matters are

required to be heard by the Division Bench of this Court. He issued directions to the Registry to place the matters before the Division Bench on 11.12.2014, as prayed by learned counsel appearing for the parties.

6. All the matters, considering the urgency, in which elections are imminent, pleaded by learned counsel appearing for the respondents, were heard on 11.12.2014. We were informed that almost on same questions, a bunch of writ petitions were filed in Jaipur Bench of this Court and the Division Bench has heard the matters and judgment was reserved. There is no interim order passed by the Division Bench of this Court at Jaipur Bench.

7. After hearing learned counsel appearing for the petitioners, learned Advocate General appearing for the State of Rajasthan and learned counsel appearing for the Rajasthan Election Commission, we had vacated the interim orders passed by learned Single Judge directing not to finalize and notify the division of wards/constituencies of re-constituted/newly created Gram Panchayats and Panchayat Samities in question vide impugned Notification dated 5.11.2014, on the ground that five years' term of the village Panchayats prescribed under Article 243E of the Constitution of India, is coming to an end in the State of Rajasthan on 23rd January, 2015. Learned counsel appearing for the Rajasthan State Election Commission stated that there is very short time left to complete the statutory process of preparing electoral rolls, issuing

notifications and fixing dates giving minimum prescribed period for nominations and for dates of polling for holding elections. Considering the objections of the Rajasthan State Election Commission and learned Advocate General that the elections are imminent and in view of Article 243-O included in Part-IX of the Constitution of India, which has been incorporated by amendment as Section 117 of the Act of 1994 and subsequently, by inserting Section 117A by Notification dated 26.4.1995 barring the jurisdiction of the Civil Court, there was no justification to continue the interim orders.

8. Since learned counsel appearing for the petitioners and learned Advocate General as well as learned counsel appearing for the Rajasthan State Election Commission had argued the matters at length on merits, we had reserved the judgment on 11.12.2014 to be pronounced at an early date.

9. We are informed that on 18th December, 2014, a Division Bench of this Court at Jaipur (Hon'ble Mr. Justice Ajay Rastogi and Hon'ble Mr. Justice J.K. Ranka) has pronounced the judgment in similar matters in Bhupendra Pratap Singh Rathore V/s State of Rajasthan & Ors. (D.B. Civil Writ Petition No. 12960/2014 and other 93 connected writ petitions), which was reserved by them on 9th December, 2014. The Division Bench at Jaipur has upheld the preliminary objections raised by the respondents, to the effect that keeping in view the mandate of Article 243-O(a) of the Constitution of India read with Section 117 of the Act of 1994, once the Notification of de-limitation of constituencies dated 5.11.2014

has been published in the Official Gazettee under Section 101 of the Act of 1994, it has got the force of law and going by the effect of Article 243-O(a), the interference by the Courts in respect of de-limitation of constituencies is barred. The Division Bench at Jaipur relied on the judgments of the Apex Court in Meghraj Kothari V/s Delimitation Commission & Ors. (AIR 1967 SC 669) and State of U.P. & Ors. V/s Pradhan Sangh Khesttra Samiti & Ors. (1995 Suppl.(2) SCC 305).

10. In State of U.P. & Ors. V/s Pradhan Sangh Khesttra Samiti & Ors. (supra), the Supreme Court held in paragraph 46 as follows:

“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 **Meghraj Kothari Vs. 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 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.”

11. The Division Bench at Jaipur in Bhupendra Pratap Singh Rathore V/s State of Rajasthan & Ors. (supra) has held as follows:-

“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.

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.

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.

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

12. In all the cases before us, as in the writ petitions before the Division Bench at Jaipur, the draft proposals for de-limitation were issued and objections were invited. The period of objections was reduced in view of urgency to complete the election process before 23rd January, 2015. In some of the cases, allegations have been made that the guidelines for minimum and maximum

population and the distance for the proposed headquarter have been violated. In some of the cases, it is stated that the objections were not considered. However, in none of the cases, it is stated that the objections were not invited or that the objections were not submitted and that no hearing was given.

13. We are in respectful agreement with the reasoning given in the judgment of the Division Bench of this Court at Jaipur in **Bhupendra Pratap Singh Rathore V/s State of Rajasthan & Ors.** (supra) and arrive at the same findings that the mandate of Article 243-O(a) of the Constitution of India read with Section 117 of the Act of 1994, creates a bar on the interference by the Courts in respect of de-limitation of constituencies.

14. All the writ petitions are consequently dismissed.

15. In view of the above, the Special Appeal filed by the State of Rajasthan has become infructuous and it stands disposed of.

16. A copy of this order will be placed in all the connected cases.

(PRAKASH GUPTA), J.

(SUNIL AMBWANI), Actg. CJ.

Parmar