

Mushe Khan and Anr Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Dec-19-2014

Appellant : Mushe Khan and Anr

Respondent : State and Ors

Judgement :

1 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
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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 2 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 HONBLE ACTING CHIEF
JUSTICE SUNIL AMBWANI HONBLE 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

ORDER

3(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 4 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..15(1) / / 2014/1473 , 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 5 101 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 SC882 & Sunderjas Kanyallal Bhathija & Ors. V/s The Collector, Thane, Maharashtra & Ors. (AIR 1990 SC261 and the judgment of this Court in M/s J.K.Synthetics Ltd. V/s Municipal Board, Nimbahera & Anr. (RLR19892 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) WLN37 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 6 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 7 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 8 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 SC669 and State of U.P. & Ors. V/s Pradhan Sangh Khesttra Samiti & Ors. (1995 Suppl.(2) SCC305.

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 Maghraj 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. 9 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 10 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 11 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

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