

Rajesh Babu and Another Vs. State of M.P. and Another

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Court : Madhya Pradesh

Decided On : Nov-12-2014

Judge : S.K. Gangele & Sheel Nagu

Appeal No. : W.A.No.286 of 2014

Appellant : Rajesh Babu and Another

Respondent : State of M.P. and Another

Judgement :

1. Heard.

2. The appellants have filed this appeal against the order dt.31.10.2014 passed in W.P.No.3656/2014.

3. Facts of the case have been mentioned in detail by the Writ Court, hence, it is not necessary to consider the facts in detail.

4. The question for consideration in this Writ Appeal is as to whether the provisions of Section 405 of M.P. Municipal Corporation Act, 1956 (hereinafter referred to as "Act of 1956") would be applicable in the facts and circumstances of the case.

5. The Governor of Madhya Pradesh issued a notification dt.6.11.2012 in exercise of power under Section 405 (3) of the Act of 1956 to the effect that some areas as

mentioned in Column No.3 of Schedule I of the notification would be included in the existing limits of the Municipal Corporation Gwalior. In accordance with the notification, 76 villages were included within the limits of Municipal Corporation, Gwalior.

6. After issuance of notification dt.6.11.2012, Collector Gwalior vide letter dt.11.2.2013 initiated process of extension of wards and formation of new wards in accordance with the procedure of Madhya Pradesh Municipal Corporation (Extent of Wards) Rules, 1994 (hereinafter referred to "Rules of 1994"). Appellant No.2 submitted an objection about the de-limitation of wards. Copy of the same was filed as Annexure P/5 before the Writ Court. Other persons also submitted objections in regard to de-limitation of wards. Those objections were decided by the Commissioner and a committee constituted by the Collector with the approval of Commissioner, Gwalior Division Gwalior. Finally Commissioner approved the proposal of addition of 61 to 66 wards to existing 60 wards of the Corporation in exercise of powers under Section 10 of the Act of 1956 vide notification dt.25.1.2014. It was notified in the gazette.

7. Learned counsel appearing on behalf of the appellants has contended that the Commissioner, Collector and the Committee were not empowered to decide the objections raised by the appellant No.2 and other persons.

Those objections had to be decided by the Governor in accordance with the procedure prescribed under Section 405 of the Act of 1956. He further submitted that because the provisions have not been complied with, hence, notification of election is contrary to law. In support of his contentions, learned counsel relied on the judgment passed by the main seat in W.P.No.12777/2014, order passed in Review Petition No.667/2014 and also another judgment passed by the Indore Bench in W.P.No.3538/2014.

8. Contrary to this, learned Government Advocate appearing on behalf of the respondents/State has contended that the provisions of Section 405 of the Act of 1956 would not be applicable in the present case because it was not a case of inclusion or exclusion of certain limits of the city of Municipal Corporation. It was a case of de- limitation and formation of wards and provisions of Section 10 of the

Act of 1956 would be applicable.

9. Section 405 of the Act of 1956 prescribes power of Governor to include or exclude certain area of the Municipal Corporation. Aforesaid section reads as under :-

"405. Power of Governor to include or exclude certain area.-(1) The Governor may, by notification in the gazette, declare the intention to include within or exclude from the limits of the city, any specified area.

(2) If the local authority having jurisdiction in the said area or any person resident therein, objects to such declaration, such authority or person may submit an objection in writing to the Collector "within a prescribed period" and Governor shall take such objection into consideration.

(3) When the said period has expired and the Governor has considered the objection under sub-section (2), the Governor may by notification, include within or exclude from the limits of the city any specified area.

Provided that when an area is excluded from the limits of any municipal area, such area notwithstanding such exclusion shall continue to be within the limits of the municipal area until the area so excluded is included in a duly constituted Panchayat area."

10. Section 10 of the Act of 1956 prescribes determination of number and extent of wards and conduct of elections. Aforesaid section reads as under :-

"10. Determination of number and extent of wards and conduct of elections.-(1) The State Government shall from time to time, by notification in the official gazette, determine the number and extent of wards to be constituted in each municipal area :

Provided that the total number of wards shall not be more than seventy and not less than forty in any municipal area. (2) Only one Councillor shall be elected from each wards.

(3) The formation of the wards shall be made in such a way that the population of each of the wards shall, so far as practicable, be the same throughout the city and the area included in the ward is compact.

(4) As soon as the formation of wards of a municipal area is completed, the same shall be reported by the State Government to the State Election Commission."

11. For the purpose to regulate the extent of wards, the State Government in exercise of powers conferred by Section 433 of the Act of 1956 has formulated the rules named as Madhya Pradesh Municipal Corporation (Extent of Wards) Rules, 1994 (hereinafter referred to "Rules of 1994").

12. From the reading of Section 405 of the Act of 1956, it is clear that the section is applicable when there is an intention to include or exclude certain area within the limits of Municipal Corporation. 60 villages were included within the limits of Municipal Corporation vide notification dt.6.11.2012 and that procedure is over. The challenge in the present petition is not the inclusion of certain area within the limits of Municipal Corporation Gwalior. The challenge in the present petition is in regard to determination of numbers and extent of wards, which is governed by Section 10 of the Act of 1956. Hence, the provisions contained in Section 405 of the Act of 1956 would not be applicable in the facts and circumstances of the present case. The arguments advanced by the learned counsel for the appellants to this extent are misconceived and the judgments relied by the learned counsel for the appellants are not applicable in the facts and circumstances of the present case because those judgments are in regard to exercise of power of Governor under Section 405 of the Act of 1956. In the present case, the provisions of Section 10 of the Act of 1956 and Rules of 1994 would be applicable and those rules have been followed by the authorities.

13. Learned Writ Court has considered in detail and held that the procedure was followed by the authorities in accordance with the Rules of 1994 and Section 10 of the Act of 1994 in de-limitation of the wards. Hence, the order passed by the Writ Court could not be said to be arbitrary and illegal.

14. It is also a fact that election procedure has been started and the election process is going on. Hon'ble Supreme Court in Election Commission of India Vs. Ashok Kumar reported in (2000) 8 SCC 216 has held as under in regard to interference in the election matters by the court :

"28. Election disputes are not just private, civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of overenthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes."

15. Considering the facts and circumstances of the case, in our opinion, the Writ Court has not committed any error of jurisdiction of law. We do not find any merit in this appeal. It is hereby dismissed.

No order as to costs.

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