

**Chand Kumar Vs. Union of India**

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**Court :** Delhi

**Decided On :** Oct-18-1996

**Reported in :** 1997IAD(Delhi)727; 1997(40)DRJ695

**Judge :** R.C. Lahoti and; S.N. Kapoor, JJ.

**Acts :** [Constitution of India](#) - Article 226; [Delhi Municipal Corporation Act, 1957](#) - Sections 5(2)

**Appeal No. :** Civil Writ Appeal No. 379 of 1994

**Appellant :** Chand Kumar

**Respondent :** Union of India

**Advocate for Pet/Ap. :** A.P. Aggarwal,; Y.R. Sharma,; R.P. Bansal,;

**Judgement :**

**R.C. Lahoti, J.**

(1) The petition seeks to challenge a notification of de- limitation issued under Section 5(2)(b) of [Delhi Municipal Corporation Act, 1957](#) (hereinafter Dmc Act, for short) to the extent to which it relates to ward No.107 - Bazar Sita Ram and ward No.108 - Paharganj (W).

(2) The petitioner is a voter registered in the voter list of Bazar Sitaram, ward No.107 of the Municipal Corporation of Delhi.

(3) The election Commission of the National Capital Territory of Delhi, the respondent No.2 exercising the delegated powers of the Central Government under Section 5 of the Act issued a notice dated 8.10.93 (Annexure P-3) proposing the limits of the 134 wards of the Delhi Municipal Corporation for the Corporation elections. The extent of ward No.107 Bazar Sita Ram and contiguous ward No.108 (Paharganj) (W) were proposed under :-

'107.BAZAR Sita Ram, All Blocks of Dmc charge No.15. Blocks 38 to 60 of Dmc Charge No.16 Blocks 60 to 74 of Dmc Charge No.23. 108.PAHARGANJ(W), Block 38 to 51 and 55 to 58 of Dmc Charge No.23 Block: 93 to 105 of Dmc Charge No.31. All Blocks of Dmc Charge No.32. It was a draft proposal.'

(4) On 31.12.1993, the respondent No.2 issued a final notification (Annexure P-2) wherein the extents of Wards No.107 and 108 have been determined as under :-

'107.BAZAR Sita Ram, Blocks 21 to 59 of Dmc charge No.15 Blocks 38 to 60 of Dmc Charge No.16 Blocks 38 to 51, 55 to 58, 60 to 74 of Dmc Charge No.23. 108. Pahar Ganj, Blocks93 to 105 of Dmc Charge No.31 All Blocks of Dmc Charge No.32. Blocks 1 to 20 of Dmc Charge No.15.

(5) Section 5 of the Dmc Act provides as under :-

5.DELIMITATIONof wards (1) For the purposes of election of councillors, Delhi shall be divided into single- member wards in such manner that the population of each of the wards shall, so far as practicable, be the same throughout Delhi. (2) The Central Government shall, by order in the Official Gazette, determine, - (a)the number of wards; (b) the extent of each ward; [ \* \* \* \*] (c)the wards in which seats shall be reserved for the Scheduled Castes] (d)the words in which seats shall be reserved for women; and (e) the manner in which seats shall be rotated under sub-sections (6) and (8) of section 3.]

(6) According to the petitioner, sub-Section (1) of Section 5 above said is the controlling provision which also incorporates a singular consideration which has to

be kept in view for the purpose of de-limitation. It provides that the population of each of the wards shall, so far as practicable, be the same throughout Delhi.

(7) Though there is no other provision in the Act or in the rules framed under the Act which may provide either mandatorily or by way of guideline as to how the delimitation of wards would be done geographically, the learned counsel for the petitioner has submitted during the course of his submissions that reference may be had to the provisions of Section 9 of the Delimitation Act, 1972 sub-Section (1) (a) of which provides that constituencies shall as far as practicable be geographically compact areas and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience. It is submitted that though the Delimitation Act, 1972 provides for de-limitation of constituencies for elections to the House of the People, Legislative Assemblies and Metropolitan Council of Delhi, it is a rule based on sense and reason and for that matter should act as a guideline to any de-limitation of wards for municipal elections as well.

(8) It is pointed out that there are following differences in the de-Limitation of wards No.107 and 108, as proposed and as finalised. (i)an area which is part and parcel of Bazar Sitaram and situated in the centre thereof has been taken out from the Bazar Sita Ram and made part of Paharganj thereby destroying the principle of contiguity and compactness; (ii) The areas bearing block No.1 to 20 and which has been carved out from Ward No.107, Bazar Sita Ram and has been added to ward No.108 Paharganj has approximately 8,531 of the voters. It has created imbalance of population and number of voters in the two wards as will be clear from the following table :-

| Ward,                          | As proposed, | As finalised | Total  | Total votes | Total            | Total votes | population |
|--------------------------------|--------------|--------------|--------|-------------|------------------|-------------|------------|
| population No.17 Bazar Sitaram | 63,971,      | 39,609       | 63,216 | 38,458      | No.18 Paharganj, |             |            |
|                                | 67,437       | 42,777       | 68,192 | 43,928      | Difference       | 3,466       | 3,168      |
|                                |              |              |        |             |                  | 4,976       | 5,470      |

THE above table shows that difference in population of the two wards was 3466 in the delimitation as proposed while it has increased to 4976 as finalised. So also the difference in the number of voters of the two wards was 3168 as proposed while it has increased to 5470 as finalised. The principle deducible from the

governing expression contained in Section 5(1) of the Dmc Act that the population of each of the wards shall as far as practicable be the same has been clearly departed from while finalising the proposal.

(9) It is submitted on behalf of the petitioner that the alteration as brought out in the final notification has been made without an application of mind, by excluding relevant factors from consideration and taking into consideration irrelevant ones which is vocative of Article 14 of the Constitution as also of the determining factors and guidelines referred to hereinabove.

(10) On behalf of the respondents, the stand taken is that the finalised de-limitation is consistent with public convenience without sacrificing the compactness and contiguity. It is pointed out that objections were received as against the proposed delimitation and the election commission has after affording hearing to the objectors chosen to revise the delimitation so far as wards No.107 and 108 are concerned. It is also submitted that delimitation is a part of legislative activity of the State immune from challenge in the writ jurisdiction of the High Court. Reliance is also placed on the Article 243Zg of the Constitution as inserted by 74th Amendment.

(11) One Mohd. Akram Qadri claiming to be an ex- Municipal Councillor has sought for intervention at the hearing. He is a voter in ward No.107, Bazar Sita Ram and claims to have been twice elected municipal corporator having continued to be so till the dissolution of the Delhi Municipal Corporation in the year 1990. He is one of the persons who had objected to the proposed delimitation by filing an objection annexure A-

1.He had made the following proposals, assigning the following reasons for the change suggested by him :- 107 Bazar Sita Ram Charge No.15-All Blocks Charge No.16-Block 38 to 60 Charge No.23-Block 60 to 74 Proposals : 1. Blocks No.1 to 20 of Charge No.15 should be deleted from ward No.107 and be included in ward No.108 Pahar Ganj. 2. The Blocks No.38 to 51 and 55 to 58 of Charge No.23 (which are included in ward No.108 Pahar Ganj) be deleted from Pahar Ganj and should be included in ward No.107.

REASONS: I.The above mentioned blocks of charge No.23 are located adjacent to and in the centre of ward No.107, Bazar Sita Ram, they do not have any connection, physical/geographically or culturally which the ward No.108, Pahar Ganj. II.The ward No.108, Pahar Ganj is situated far away from the blocks of charge No.23 and it has not thus any connection geographically or culturally with these blocks so the inclusion of these blocks in ward No.108 does not have any logic. III.The blocks No.38 to 51 & 55 to 58 of Charge No.23 were situated in the ward No.107 Bazar Sita Ram previously. IV.The population of these blocks consists of Minority Community and so the residents including Purdah clad women shall have to face much difficulties to contact their elected representative in order to get their day to day problems concerned civic amenities solved by crossing Railway over bridge of New Delhi Railway Station. V.The residential character of walled city population is different from the rest of Delhi and so the inclusion of said blocks of charge No.23 into ward No.107 shall constitute the natural boundary as well as will be the preservation of walled city character. VI.As for Blocks 1 to 20 of charge No.15 are concerned these blocks are directly connected with ward No.108 Pahar Ganj physically. VII.By exchange of these blocks i.e. Block 38 to 51 & 55 to 58 of charge No.23 from ward No.108 to ward No.107 and blocks 1 to 20 of charge No.15 from ward No.107 to 108, the total population according to census and voters shall remain equal and undisturbed as is evident from the enclosed annexure.'

(12) We have called for the record of the original proceedings from the custody of the Election Commission and perused the same. The record reveals the following facts.

12.1 On proposed delimitation having been published several objections were received. Out of these 5 objections are relatable to award No.107 and 108. Two objections are by political parties and two objections are by two individuals. Then there is an objection which purports to be accompanied by a good number of signatures of persons belonging to a particular community wherein they seek alteration in the delimitation on the ground of being member of a particular community. [Here itself we may state that the learned counsel for the petitioner has disputed the genuineness and authenticity of the objections so preferred

submitting that the number of signatures obtained on the objection petition may be false or just procured, but we do not propose to divert ourselves to dwelling on disputed questions of fact].

12.2. Several other objections relating to other wards were also received. The Election Commission set out a schedule for hearing of the objections wardwise. On the date appointed for hearing of objections relating to wards No.107 and 108 none other than the Intervener before us appeared. He was heard by the Deputy Election Commissioner on behalf of the Election Commission.

12.3. THE minutes of hearing are recorded. However, there is no record of decisions taken on the objections. The decision has to be impliedly read in the final notification.

(13) During the course of hearing, we had asked learned counsel for the respondents to make available for our perusal any authentic maps based on which the election commission was dealing with process of delimitation. The map of Delhi was produced for our perusal and there from the respondents have prepared and filed extract copies of the map showing the wards 107 Bazar Sita Ram and 108 Pahar Ganj - as proposed and as finalised. These maps are very significant. We have taken them on record and marked them as Exhibit A, Exhibit B, Exhibit C and Exhibit D.

(14) It was stated during the course of hearing that the figures of population taken into consideration by the election commission are the figures based on the last census.

(15) It is clear from the record of the proceedings that though 5 objections purports to have been received relevant to ward No.107 and 108, at the public hearing appointed by the Election Commission it is only the intervener Mohd. Akram Qadri who had appeared and pressed for his suggestions being accepted. The Election Commission has chosen to accept his suggestions. However, the proceedings of the election commission do not show any reasons having been placed on record as having appealed to it for changing the delimitation. We make it clear that we may not be understood going to the extent of holding that the Election Commission

was bound to assign reasons for accepting any alteration in the proposed delimitation. All that we propose to say is this much that if any reasons would have been available on record, those would have enabled us applying our mind to them and finding out what had ultimately prevailed with the Election Commission in changing its view. Before proposing de-limitation of wards on 8.10.93, the Election Commission must have done its own exercise. The proposal must have been formulated by due application of mind to all the relevant factors and then only published. Had there been no objections filed then the delimitation as proposed would have been accepted and made final. We have, therefore, to hold that the proposals were reasonable and in conformity with the relevant considerations so far as Election Commission is concerned. We have to find out the reasons for the alterations made in the proposals and to test the validity thereof; whether they withstand the test of reason, fairness and relevance.

(16) A perusal of the maps exhibit A to exhibit D makes interesting revelation. Wards No.107 and 108 are divided by a railway line passing between the two wards. Both the wards could have been geographically compact if only care would have been taken to delimit them from that point of view. However, we find a small part of area lying in the heart of Ward No.108 having been separated from it and joined with Ward No.107. Thus a very small fraction of Ward No.107 lies as if it were an island in the ocean of Ward No.108. The maps of the two wards show the ward No.108, Paharganj having been given a camel like shape : while the trunk of the body is 108 Pahar Ganj lying on one side of the railway line, the neck of the camel stretches across the railway line and the Railway bridge near New Delhi railway station and the head of the camel lies poked into the tent of ward No.107. We do not find any sensible reason brought on record or put forth justifying such an unusual phenomenon.

16.1The figures of population and voters of the two wards as proposed and as finalised (see table in para 8 above) clearly indicate that while there was a difference of only 3466 persons in the population of ward No.107 and 108 as proposed, the difference has increased to 4976 in the population of the wards as finalised. So is with the number of voters. The difference in the two wards was 3168 as proposed while it has increased to 5470 between the two wards as

finalised.

(17) Though the election commission has not in so many words stated in its proceedings, it is clear from the contents of the intervener application and the document (Annexure A-1) filed therewith that the intervener was seeking a change in the delimitation on the consideration of community. Article 15 of the Constitution prohibits the State from discriminating on grounds only of religion, race, caste, sex, place of birth or any of them. It is clear that no State activity can be guided by the considerations of community. It is to be noted that none of the wards Nos.107-108 is a ward reserved for any community or caste on the considerations of minority entitled to protection under the Constitution. Section 22(3) of Dmc Act provides that an appeal to vote on ground of community would be a corrupt practice. How could a de- limitation be guided by consideration of community?

(18) We find no merit in the submission of the learned counsel for the respondents and of the intervener that delimitation is a legislative function and hence immune from challenge under Article 226 of the Constitution. In our opinion it is a mere executive act discharged by the Central Government or its delegatee under Section 5 of the Delhi Municipal Corporation Act.

(19) Article 243ZG provides as under :-

243-ZG.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 243ZA shall not be called in question in any court; (b)no election to any Municipality 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.'

(20) On a bare reading of this Article, the submission of the learned counsel for the respondents excluding the jurisdiction of the High Court to examine the question raised in the petition has to be discarded. This Court has not been called upon to examine the validity of any law relating to delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under

Article 243ZG. Any delimitation if it falls foul of the statutory power under which it purports to have been made and smacks of arbitrariness, whim or fancy, offensive of Article 14 of the Constitution then it is open to judicial review under Article 226 of the Constitution on the well established parameters. We are fortified in the view we are taking by several observations made by a Division Bench of Allahabad High Court in Mukesh Ram Chandani Vs . State of U.P., : AIR1996 All219 .

(21) Though counter by the respondent No.2 has been filed on the affidavit of Shri D.N. Khaneta, the Deputy Election Commissioner, Nct, Delhi but even in his counter he has not set out the reasons which had prevailed with the commission for altering the delimitation of wards No.107 and 108 from as proposed. Incidentally, Shri D.N.Khnetta is the same person who had heard the objections on behalf of the Election Commission. Thus neither the reasons are available on record nor the reasons have been set out or explained before the Court. We are only left to guessing. From whatever material as has been placed before us we find that they are only the community considerations which have prevailed with the respondents and the considerations of contiguity compactness and equal distribution of population as far as possible, have not been given weight.

(22) Last but not the least, we may refer with advantage to the decision of the Supreme Court in State of Madhya Pradesh VS . Devi Lal : AIR 1986 SC434 . There Lordships have noticed the well known American expression - 'Gerrymander' - which has taken route in English language and which means -

'TO arrange election districts so as to give an unfair advantage to the party in power by means of a re- distribution act or to manipulate constituencies generally.'

'ALTERATION in the constituencies of the blocks of panchayats was subject matter of challenge before their Lordships. Their Lordships doubted if reconstructing the constituencies of the block was within the powers of the State at a stage at which it was done. Then their Lordships observed (vide para 16) :- Even if there was such a power, the State Government was in duty bound to publish the proposal giving an opportunity to the persons affected to raise their objections to the proposed alteration.' The impugned notification was struck down by the High Court and the decision of the High Court upheld by the Supreme Court.

(23) In the case at hand there is no specific provision brought to our notice which contemplates proposed delimitation being published for the purpose of inviting objections from the citizens inhabiting the wards. Apparently it was done to satisfy the principles of fair play and natural justice. Who else than the electors in a democracy would have vital interest in delimitation of the wards/constituencies? The voters of Delhi Municipal Corporation limits were apprised of the originally proposed delimitation. None except the objectors, to be more specific the objector-intervener before us, knew that the constitution of wards No.107 and 108 was going to be changed and in what manner. Consistently with the same principles, considerations and force which had persuaded the respondents in notifying the proposals, to be fair and just to the citizens the proposed alteration should have been notified by publication so as to afford opportunity to the persons likely to be affected adversely thereby to raise their objections to the proposed alteration. This would have been in compliance with the law laid down by the Supreme Court in the case of State of Madhya Pradesh v. Devi Lal (supra). We have also found the proposed alteration to be vitiated in as much as it offends the principles of contiguity and compactness and proceeding on irrelevant considerations such as considerations of caste and community.

(24) For the foregoing reasons, the petition is allowed. The impugned notification Annexure P-2 to the extent of altering delimitation of wards No.107 - Bazar Sita Ram and 108 - Paharganj over and above the proposed delimitation notified vide notification annexure P-3 is hereby quashed.

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