

WP 4598 of 2015
(Shrigopal Gupta Vs. State of MP)
And
WP4723 of 2015
(Shrigopal Gupta Vs. State of MP)

10/08/2015

Shri Sushil Chaturvedi, learned counsel for the petitioner.

Shri Arvind Dudawat, learned Additional Advocate General and Shri Praveen Newaskar, learned GA for the respondents 1 and 2 / State.

Shri Mahesh Goyal, learned counsel for respondent No.3/ Municipal Corporation, Morena.

Shri RD Jain, learned Senior Advocate assisted by Shri Sangam Jain, learned counsel for respondent 4 MP State Election Commission.

Heard on the question of admission.

Order (oral)

U.C.Maheshwari,J.-

This order shall govern the disposal of above mentioned both the writ petitions filed by the same petitioner regarding dispute relating to the Morena Municipal Corporation, the process by which its wards were constituted and against the notification issued to hold the elections of such Municipal Corporation.

2 Petitioner, by stating himself to be a Journalist and correspondent of Punjab Kesari newspaper has filed Public

Interest Litigation petition (Writ Petition No.4598/2015) for issuance of appropriate writ against the authorities of the respondents for the following reliefs:

“That, by way of present petition, the petitioners pray that this Hon'ble Court be pleased to direct the respondents to cure the illegality in declaration of Reserved wards & to undertake the process in strict compliance of Madhya Pradesh Nagar Palika (Anusuchit Jati, Anusuchit Janjati, Pichchda Varg Evam Mahilaon Ke Liye Wardon Ka Arakshan) Niyam, 1994 & the Resp No.3 be directed not to declare the Election program till the process in accordance thereof is completed.”

3 Such petitioner has also filed another Public Interest Litigation petition (WP 4723/2015) for issuance of appropriate writ against the authorities of the respondents for the following reliefs:

“That, by way of present petition, the petitioners pray that this Hon'ble Court be pleased to direct the respondents to cure the illegality in declaration of Extent of Municipal wards & the severe illegality in preparation of the same & to undertake the process in strict compliance of Madhya Pradesh Municipal Corporation Extent of wards Rules 1994 & then undertake the proposed elections & the enquiry be directed against the erring officials.”

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4 Petitioner's counsel after taking us through the pleadings of both the writ petitions and annexed documents argued that before issuance of notification to hold elections of the Municipal Corporation, Morena, constitution of the wards were not carried out in accordance with Rule 3 of the Madhya Pradesh Municipal Corporation (Extent of Wards) Rules, 1994 [for brevity, the "Rules"], the mandatory provisions of Article 243S of the Constitution of India had also not complied with by the authorities while formation of the wards of Municipal Corporation. In such backdrop, by referring Schedule 3, a part of Annexure R/4 filed with WP 4723/2015, he said that the wards of the Municipal Corporation, Morena, i.e. 47 in number have not been constituted by declaring the equal population of each ward with either side variation of 15% provided under sub-rule (2) of Rule 3 of the Rules. In continuation, he said that against the proposal of constitution of wards in the aforesaid manner, on filing the objections of the persons of the town, the same were not considered in accordance with

law and such proposal was finalized. In response of some specific query of the Court, petitioner's counsel has categorically conceded that against the aforesaid proposal of constitution of the wards, the present petitioner has not filed any objection under Rule 8 of the Rules before the authority within the time prescribed. In continuation, he said that in view of settled proposition, there is no absolute bar to entertain and decide these petitions in spite the provisions of Article 243ZG of the Constitution of India. In support of such contention, he has also placed his reliance on some reported cases along with on an unreported order of the Division Bench of this Court. In continuation, he said that as per the provisions of the Rules and the Act, the Collector was not competent authority to consider and decide the objections and finalize the constitution of the wards and, in such premises, the notification of finalization of the wards being not issued by the authority in consonance under the MP Municipal Corporation Act, 1956 (for brevity, the "Act"), as well as the aforesaid Rules, is not

sustainable and in such premises, the notification issued to hold the elections is also not sustainable and prayed for quashment of the impugned notification constituting wards and pursuant to it to quash the notification issued to hold the elections of the Municipal Corporation, Morena scheduled on 12th August, 2015 by admitting and allowing these writ petitions. Except the aforesaid, no any other question was raised by the petitioner's counsel.

5 Responding the aforesaid arguments, Shri RD Jain, learned Senior Advocate assisted by Shri Sangam Jain, Advocate, before making any submissions on merits of the matter, by referring to Article 243ZG of the Constitution of India, said that according to the provisions of this Article after issuance of the notification to hold elections of the Municipality, in which by virtue of Article 243Q of the Constitution Municipal Corporation is also included, the validity of any law relating to delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made shall not be called in question in any

Court. He further said that if any party has any objection in that regard, then as per clause (b) of Article 243ZG, such dispute could be/shall be raised in an election petition in accordance with the procedure prescribed in that regard under section 441 & 441-B of the Act. In further argument, he said that in any case, such objection could be raised and the election could be called in question after holding the same in accordance with the programme notified and procedure prescribed under the law. It is an undisputed position that there is a provision of an election petition under Sections 441 to 441-B of the Act. In support of such arguments, he placed reliance on various reported decisions of the Apex Court as well as of High Courts and said that in the available circumstances, both the writ petitions do not require any consideration on merits at this stage. In continuation, he said that the wards have been constituted by the authority as per provisions of Section 10 of the Act so also in accordance with the aforesaid rules. By referring to sub-section (3) of Section 10 of the Act he

said that no percentage of variation of population of either side to constitute the ward has been prescribed. In continuation by referring to sub-rule (2) of Rule 3 of the Rules he said that according to it, the ward is constituted according to the population with variance of 15% population either side in comparison of other wards and so far as 15% is concerned, such provision is enacted under the Rules as directory and not mandatory. He also argued that after issuing the notification to hold the elections, the process of the same is in progress and therefore, in view of settled propositions by entertaining these petitions the election process could not be withheld or stayed because in view of the provisions of Article 243U of the Constitution, the authorities are bound to hold elections of the Municipal Corporation within a period of six months from the date of dissolution of the earlier body. He said that earlier town of Morena was having the Municipal Council. Such Council has already been dissolved in the month of January, 2015. In such premises, by entertaining these petitions if the

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election is withheld then it may cause irreparable injury to the system as well as to the public at large in the existing democratic system. He also said that at the time of finalization of the proposal to constitute wards against the proposal, the present petitioner had not filed any objection in any manner as per requirement of Rule 8 of the Rules and in such premises, it could not be inferred that if the election is held then rights of the petitioner would be prejudiced or affected adversely in any manner.

6 With these submissions, he prays for dismissal of both the writ petitions at the initial stage.

7 Shri Arvind Dudawat, Additional Advocate General and Shri Praveen Newaskar, Government Advocate for the respondents No. 1 and 2/ State authorities, so also Shri Mahesh Goyal, counsel for the respondent No.3-Municipal Corporation, Morena, by adopting the arguments advanced by the Senior Advocate Shri Jain, in addition, they said that in view of the mandatory provisions of Article 243ZG read with Articles 243Q, 243U(3)(b) of the Constitution, the

petitions being not entertainable deserve to be dismissed and prayed for the same.

8 Having heard the counsel, keeping in view their arguments, we have carefully gone through both the petitions along with the annexed papers so also the aforesaid provisions of law and the case laws referred by the counsel of the parties.

9 Before proceeding further, we deem fit to reproduce Articles 243ZG, 243Q, & 243U(3)(b) of the Constitution. The same read as under :

"243ZG. Bar to interfere 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 243ZF 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.

243Q. Constitution of Municipalities-(1)

There shall be constituted in every State,

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, a transitional area, a smaller urban area or a larger urban area means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part

243U(3)(b):- xxx xxx xxx xxx

before the expiration of a period of six months from the date of its dissolution: Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary

to hold any election under this clause for constituting the Municipality for such period “

10 In view of the aforesaid provisions of the Constitution, if the case at hand is examined, then it is apparent that after notifying the wards of the Municipal Corporation, Morena and carrying out the necessary formalities, notification to hold elections has been issued by the State of MP on 20th July, 2015. Pursuant to it, process of election has been commenced and in continuation of such process, polling is scheduled on 12th August, 2015. The date of counting and declaration of the result has also been notified. In such premises, as apprised by the counsel, the election process is being carried out by the Returning Officer of the Election Commission of the State of MP. So in the available circumstances, firstly we have to consider the aforesaid technical question regarding entertainability of these writ petitions at this stage and subject to outcome of such question, if necessary, then this Court has to consider the other questions of these petitions relating to the other

merits of the matter.

11 Long before, in the matter of ***Election Commission of India Vs. Ashok Kumar and Ors, (2000) 8 SCC 216***, while dealing with the identical situation, the Apex Court has held as under :

“The conclusions which inevitably follow are : in the field of election jurisprudence, ignore such things as do not materially affect the result of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached and such breach satisfies the test of material effect on the result of the election of the returned candidate yet postpone the adjudication of such dispute till the election proceedings are over so as to achieve, in larger public interest, the goal of constituting a democratic body without interruption or delay on account of any controversy confined to an individual or group of individuals or single constituency having arisen and demanding judicial determination.”

12 Apart the aforesaid, taking into consideration the aforesaid provisions of Article 243ZG of the Constitution, the Apex Court in the matter of ***Anugrah Narain Singh Vs. State of UP, (1996) 6 SCC, 303*** has held as under :

“In terms of Article 243-ZG of the Constitution, there is complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever after the publication of the notification for holding municipal election. The bar imposed by Article 243-ZG is twofold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any court. No election to a municipality can be questioned except by an election petition. Moreover, it is well settled by now that if the election is imminent or well under way, the court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the court and stall the elections. The High Court overlooked the fact that no municipal election had been held in the State for nearly ten years and the dates of the elections were fixed under the directions given by the High Court in another case. Importance of holding elections at regular intervals for panchayats, municipal bodies or legislatures cannot be over emphasised. If holding of elections is allowed to be stalled on the complaint of a few individuals, then grave injustice will be done to crores of other voters who have a right to elect their representatives to the local bodies. As a result of the order of the High Court, elections that were going to be held to the local bodies after a long lapse of nearly ten years were postponed

indefinitely. The Court should not intervene even when the elections were imminent. Here, the election was well under way. Moreover, if the Division Bench sitting at Allahabad was of the view that the Lucknow Bench had erred in dismissing the writ petition challenging the holding of the municipal elections, the matter should have been referred to larger bench.”

13 Again on arising of the occasion in the matter of

Jaspal Singh Arora Vs. State of MP, (1998) 9 SCC 594

the Apex Court has answered the identical question as under :

“3. These appeals must be allowed on a short ground. In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in [Article 243-ZG](#) of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under [Article 243ZG](#), on settled principles interference under [Article 226](#) of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition and also the fact that an earlier writ petition for the same purpose by a defeated candidate had been

dismissed by the High Court.”

14 Such question was also considered and answered by the Full Bench of the Gujarat High Court in the matter of ***Jabir Hussain Nasir Ahmed Vs. State of Gujarat, AIR 2006 GUJARAT 53*** in the following manner :

“14. We have carefully considered the above referred judgments relied upon by the learned advocates. We are of the view that none of the aforesaid judgments supports the contentions raised by Mr.Raval and Mr.Vyas. It is the consistent view of this Court and the Hon'ble Supreme Court that the bar imposed by [Article 243-ZG](#) is absolute and that the resolution of any dispute pertaining to an election which has the effect of interrupting, obstructing or protracting the election shall be postponed until after the completion of the election. The Court shall desist from making any order; interim or otherwise, which has the effect of postponement of the election. The process of election, as defined in Clause 7A of [Section 2](#) of the Act of 1963, shall be deemed to have commenced from the date the order of delimitation of wards is made by the Election Commission of the State. Hence, once the order of delimitation of wards is made no court shall entertain any dispute concerning the delimitation of wards or any other matter concerning the election. The resolution of such disputes shall be postponed until after the election is complete.

16. In the present case, though it is submitted that the meaning of the word "election" given under the above referred Clause 7-A is artificial and arbitrary, the validity or legality thereof is not questioned before us. Considering the aforesaid legal position, we are of the opinion that the dispute raised by the petitioners in connection with the delimitation of wards raised in the present set of petitions shall not be entertained at this stage and the resolution of the said dispute shall be postponed until after the election is over and the results are declared."

15 On this question the Division Bench of the ***Karnataka High Court in the matter of Surendra Babu Vs. State of Karnataka, AIR 1996 KARNATAKA***

339 has held in paragraphs 6 and 7 as under :

".....Therefore, on the basis of the authority of the decision of the Supreme Court in AIR 1975 SC 2299, it must be held that barring the jurisdiction of the Court in matters of delimitation of constituencies or allotment of seats thereto by Article 243 ZG does not affect the basic feature of the Constitution.

.....In case where for the first time a right is granted and that right is controlled by other provisions which bar the jurisdiction of the Courts, we do not think the basic feature of the Constitution is affected."

16 In view of aforesaid provision of the Constitution and the principles laid down by the Apex Court as well as High Courts, on examining the case at hand, it is apparent that the notification to hold the elections of the Municipal Corporation has already been promulgated on 20th July, 2015 and according to the same, process of election is being carried out by the Election Commission and polling is to take place on 12th August, 2015. Thus, in view of the principles laid down in the above mentioned cited cases, we are of the considered view that objections and the grounds taken by the petitioner in the present petitions could neither be considered nor adjudicated on merits by entertaining these petitions. As the provisions of Article 243ZG of the Constitution of India being mandatory, this Court cannot interfere in the matter by invoking the jurisdiction under Article 226 of the Constitution of India. In any case, subject to declaration of the result, on arising of an occasion, the aggrieved and affected party may approach appropriate forum of the Election Tribunal for

redressal of such dispute in accordance with the procedure prescribed in sections 441 to 441-B (d)(iv) of the Act.

17 So far as the case laws cited on behalf of the petitioner are concerned, in view of the aforesaid various decisions of the Apex Court, the decisions of this Court in the matters of **Ashok Kumar Tripathi Vs. Union of India, [2001(4) MPLJ 2006]** and **Naravadi Bai Choudhary Vs. State of MP, [2005(2)MPLJ 306]**, are not helping the petitioner in the present matter, at this stage.

18 So far as the case of **Abhinesh Mahore and others Vs. State of MP**, decided on 14/10/2014 by the Division Bench of Principal Bench of this Court in WP 12777/2014, is concerned, from para 7 of such order, it is apparent that in such matter, petitioner had submitted his objections before the Collector in respect of constitution of the wards, whereas in the present case, on making query from the petitioner's counsel, he categorically stated that no such objections were filed by the present petitioner under the provisions of Rule 8 of the Rules. In such premises, such

case law being distinguishable on facts from the case at hand, is not helping the petitioner.

19. In view of the aforesaid, there is no necessity to consider the other merits of the matter as advanced by the counsel, at this stage, in the present petitions.

20. In view of the aforesaid elaborate discussions, both the writ petitions being not entertainable, deserve to be, and are hereby dismissed on such technical ground.

21. There shall be no order as to costs.

(U.C.Maheshwari)
Judge

(B.D.Rathi)
Judge