

**THE HIGH COURT OF JUDICATURE FOR MADHYA
PRADESH, AT JABALPUR**

(DIVISION BENCH)

WP-14695/2020

Rakesh Sushil Sharma Petitioner

Vs.

State of Madhya Pradesh and others Respondents

Coram :

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice

Hon'ble Mr. Justice Vijay Kumar Shukla, Judge

Presence :

Shri Shekhar Sharma, learned counsel for the petitioner.

Shri Pushpendra Yadav, learned Additional Advocate
General for the respondents/State.

Shri Siddharth Seth, learned counsel for the respondent
No.2.

Whether approved for reporting: Yes.

Law Laid Down:

- To safeguard against any such possibility of the relocation/shifting of certain sections of the population from one ward to another sub-rule (2) of Rule 3 of Rules, 1994 has given a leverage to the competent authority to have the

variation upto 15 per cent of the population between one ward and another. Even if some voters would shift from one ward to another, that would not justify to have another yardstick for division of the city into Municipal wards.

Significant paragraphs: **6, 7, 8, 9, 10 & 11**

Hearing Convened through Video Conferencing.

ORDER

(Passed on this 10th day of February, 2021)

Per: Mohammad Rafiq, CJ

The present writ petition has been filed by the petitioner Rakesh Sushil Sharma with the following prayer :-

- (1) This Hon'ble Court may kindly call for the entire record pertaining to order dated 15.09.2020 passed by the respondent No.3 and order dated 29.06.2020 passed by the respondent No.1.
- (2) This Hon'ble Court may kindly please to issue a writ in the nature of certiorari for quashing the impugned order dated 29.06.2020 issued by the respondent No.1 and order 15.09.2020 issued by the respondent No.3.
- (3) This Hon'ble Court may kindly please to issue a writ in the nature of mandamus directing the respondent for conducting fresh exercise for delimitation of wards of Municipal Corporation Bhopal and also conduct survey for identifying the population of SC, ST and OBC before reservation of the wards of Municipal Corporation, Bhopal.
- (4) Any other relief which this Hon'ble Court deems just and proper in view of aforesaid facts and grounds may kindly be allowed in favour of petitioner."

2. The petitioner is a resident of Ward No.32 in the city of Bhopal. He has filed the present writ petition challenging the action of the respondent No.2/State Election Commission in issuing public notice for reservation of 85 Wards of Municipal Corporation Bhopal for upcoming election of the Municipal Corporation Bhopal. The petitioner earlier also filed a writ petition bearing W.P. No.12541/2020 raising similar issue.

3. Learned counsel for the petitioner contended that the petitioner has already submitted a representation to the Collector, Bhopal on 25.08.2020 pointing out that on account of the implementation of the 'Smart City Project', several voters of Ward No. 25, 31 and 32 have been relocated to other wards of the city and therefore, the population of those wards have been reduced. A fresh exercise of delimitation of the wards should therefore be carried out as per Section 10(3) of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as the 'Act of 1956') read with Rule 3 of the Madhya Pradesh Municipal Corporation (Extent of Wards) Rules, 1994 (hereinafter referred to as 'Rules, 1994'). The aforesaid writ petition was disposed of by order of this Court dated 14.09.2020 directing the respondent No.2- Collector/District Returning Officer, Bhopal, District Bhopal (M.P.) to consider and decide the representation of the petitioner in accordance with law

within a period of one month from the date of communication of the order passed today. The Collector, has by order dated 15.09.2020 has mechanically dismissed the representation filed by the petitioner. It is this order which is assailed in the present writ petition.

4. Shri Shekhar Sharma, learned counsel for the petitioner submitted that the Collector in dismissing the representation of the petitioner has given two reasons both of which are wholly irrelevant for deciding the controversy. The first reason which the Collector has given is that since the Urban Development and Housing Department of the Government of M.P. has issued an order dated 07.08.2020 directing that in view of the ongoing Census Operation of 2021, the limits of the Administrative Units have to be kept frozen as per the mandate of Rule 8(iv) of the Census Rules, 1990 issued by the Central Government for the specified period. Since, the boundaries of the Administrative Units cannot be altered between 01.01.2020 to 31.03.2021, the exercise of delimitation cannot be undertaken. The second reason given by the respondent/Collector in rejecting the representation is also factually incorrect that as per Section 10(3) of the Act of 1956, the formation of 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. The 'Population' as per Rule 2(4) of Rules, 1994 shall mean the population ascertained at the last preceding census of which the relevant figures have been published. Since the public census figures of 2011 shall form the basis for formation of wards, the argument of the petitioner has not been accepted.

5. Learned counsel for the petitioner submitted that the fact that on account of the implementation of the 'Smart City Project', several government buildings were demolished which also included the residential quarters of various government departments in Ward Nos.25, 31 and 32 and therefore, the population of these wards has been substantially reduced is undeniable.

6. In our view, while the contention of the petitioner that the ward cannot be considered as an Administrative Unit in the meaning of Rule 8(iv) of the Census Rules, 1990, may have some substance because the said rule reads as under :-

- i. xxx xxx xxx
- ii. xxx xxx xxx
- iii. xxx xxx xxx
- iv. freeze the administrative boundaries of districts, tehsils, towns, etc. from the date to be intimated by the Census Commissioner which shall not be earlier than one year from the census reference

date and till the completion of the census;

- v. xxx xxx xxx
- vi. xxx xxx xxx
- vii. xxx xxx xxx”

7. What is required by the aforesaid Rule is that the Administrative boundaries of the Districts, Tehsils, Towns etc., from the date to be intimated by the Census Commissioner, shall be kept frozen, which shall not be earlier than one year from the census reference date and till completion of census. The relevant period as per the order of the Collector is from 01.01.2020 to 31.03.2021. The ward has not been indicated to be an Administrative Unit in the aforesaid rule.

8. However, if the aforesaid reason is not accepted as valid, we do not find any infirmity in the impugned order of the Collector which can be sustained on the second reason given by him. The sub-section (1) of Section 10 of the Act of 1956 provides that 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. The first proviso to sub-section (1) of Section 10 however stipulates that the total number of wards shall not be more than seventy and not less than forty in any municipal area. The second proviso however stipulates that a

municipal area having population of more than ten lakh, may have maximum eighty five wards. Sub-section(2) of Section 10 of the Act of 1956 provides that only one Councillor shall be elected from each ward. Sub-section(3) of Section 10, with which we are concerned in the present matter, then provides that 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.

9. The State Government, in exercise of its power conferred upon it under Section 433 of the Act of 1956, has framed the Madhya Pradesh Municipal Corporation (Extent of Wards) Rules, 1994, for the purpose of carrying into effect the provisions of the said act. Sub-rule (1) of Rule 3 of Rules, 1994 provides that a Municipal area shall be divided into wards in number equal to the number of wards as determined by the State Government under sub-section(1) of Section 10. Sub-rule (2) of Rule 3 provides that the population of every Municipal area on dividing by the number of wards as determined for that municipal area and the quotient so arrived shall be the average population of a ward, in which a variation upto 15 per cent may be allowed. Sub-rule (3) of Rule 3 provides that the area comprised within every ward shall be compact.

10. The 'population' has been defined in sub-rule (4) of Rule 2 of Rules, 1994 as population ascertained at the last preceding census of which the relevant figures have been published. It is not in dispute that the last preceding census of which the public figures are available is that of 2011. The Collector in the order impugned has given this reason that the division of wards has been made as per the public figures of the Census of 2011.

11. The petitioner in his representation submitted before the Collector has given the reason that due to demolition of the government buildings on account of the implementation of the 'Smart City Project', several voters have left the Ward Nos.25, 31 and 32 and migrated elsewhere. The government buildings, as it is, in a vague term where generally one cannot conceive that large number of voters would be residing. Learned counsel for the petitioner sought to clarify this by stating that by use of the word 'government building' here the petitioner also meant to indicate the government quarters which have also been demolished. Be that as it may, in order to safeguard against any such possibility of the relocation/shifting of certain sections of the population from one ward to another that sub-rule (2) of Rule 3 of Rules, 1994 has given a leverage to the competent authority to have the variation upto 15 per cent of the population between one ward and another. Even if

some voters would shift from one ward to another, that would not justify to have another yard-stick for division of the city into Municipal wards. In this case, the Municipal Corporation of Bhopal is divided into 85 wards. The competent authority has to take a definite basis for formation of the wards. It is for this purpose that the published figures of the population at the last preceding census has been taken as the definite basis as the publication of the next public figures will have to wait for completion of the Census Operation of the year 2021.

12. In view of the above, we do not find any infirmity in the order passed by the Collector and find no reason to interfere with.

13. Accordingly, the present writ petition stands **dismissed**.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE