

SUPREME COURT OF INDIA

Association of Resident of Mhow (ROM)

Vs.

The Delimitation Commission of India

C.A.No. 2047 _____ of 2009

(Lokeshwar Singh Panta and B. Sudershan Reddy JJ)

31.03.2009

JUDGMENT

B. SUDERSHAN REDDY, J.

1. Leave granted.

2. This appeal has been filed against the judgment and order of the High Court of Madhya Pradesh at Jabalpur dismissing the W.P. (c) No. 13509 of 2007 filed by the appellants herein.

INTRODUCTION:

3. The periodic readjustment of the Lok Sabha and Assembly Constituencies is mandatory in representative systems where single member constituencies are used for electing political

representatives. The electoral districts are drawn on the basis of the last published census figure that they are relatively equal in population. Electoral districts that vary significantly in population - a condition called malapportionment - violate a central tenet of democracy that all the votes cast must be of equal weight. The last delimitation was in 1973 pursuant to the Delimitation Act, 1972. Since then there has been an increase of 87% in the population and most of the constituencies across the country have become malapportioned.

4. The Delimitation Act, 2002 (for short 'the Act') is an Act to provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State and each Union territory having a legislative Assembly into territorial constituencies for election to the House of the People and Legislative Assemblies of the States and Union territories and for matters connected therewith. The Central Government constituted the Delimitation Commission (for short 'the Commission') in exercise of its power under Section 3 of the Act consisting of a retired judge of the Supreme Court as its Chairperson and other members. The Commission so set up started functioning w.e.f. 4.7.2002.

5. In order to appreciate the nature of functions and duties entrusted to the Commission it may be just and necessary to notice the relevant provisions.

6. Section 8 deals with readjustment of number of seats. It says:

"8. Readjustment of number of seats.-- The Commission shall, having regard to the provisions of articles 81, 170, 330 and 332, and also, in relation to the Union territories, except National Capital Territory of Delhi, sections 3 and 39 of the Government of Union Territories Act, 1963 (20 of 1963) and in relation to the National Capital Territory of Delhi sub-clause (b) of clause (2) of article 239AA, by order, determine,--

(a) on the basis of the census figures as ascertained at the census held in the year 1971 and subject to the provisions of section 4, the number of seats in the House of the People to be allocated to each State and determine on the basis of the census figures as ascertained at the census held in the year 1[2001] the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State; and

(b) on the basis of the census figures as ascertained at the census held in the year 1971 and subject to the provisions of section 4, the total number of seats to be assigned to the Legislative Assembly of each State and determine on the basis of the census figures as ascertained at the census held in the year 1[2001] the number of seats, if any, to be reserved for the Scheduled Castes and for the

Scheduled Tribes of the State:

Provided that the total number of seats assigned to the Legislative Assembly of any State under clause (b) shall be an integral multiple of the number of seats in the House of the People allocated to that State under clause (a).

7. Section 9 deals with delimitation of constituencies which is as under:

"9. Delimitation of constituencies. --

(1) The Commission shall, in the manner herein provided, then, distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State as readjusted on the basis of 1971 census to single-member territorial constituencies and delimit them on the basis of the census

figures as ascertained, at the census held in the year 1991, having regard to the provisions of the Constitution, the provisions of the Act specified in section 8 and the following provisions, namely:--

(a) All 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;

(b) Every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency;

(c) Constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and

(d) Constituencies in which seats are reserved for the Scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total is the largest.

(2) The Commission shall--

(a) Publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of any associate member who desires publication thereof, in the Gazette of India and in the Official Gazettes of all the States concerned and also in such other manner as it thinks fit;

(b) Specify a date on or after which the proposals shall be further considered by it;

(c) Consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places in each State as it thinks fit; and

(d) Thereafter by one or more orders determine--

(i) The delimitation of parliamentary constituencies; and

(ii) The delimitation of assembly constituencies of each State.

FACTUAL BACKGROUND:

8. In the State of Madhya Pradesh there are 29 Parliamentary Constituencies and 230 Assembly Constituencies. Out of these 29 Parliamentary Constituencies 27 have 8 Assembly Constituencies each and 2 Parliamentary Constituencies have 7 Assembly Constituencies each. In pursuance of sub-section (2) of Section 9 of the Act, the Commission vide its Notification dated 19.1.2007 published its proposals for the delimitation of Parliamentary and Assembly Constituencies in the State of Madhya Pradesh. The Commission invited objections and suggestions in regard to its proposals to be submitted on or before 1.2.2007 after which date the proposals were to come up for further consideration by the Commission. Under the said proposals Dhar Parliamentary Constituency is shown consisting of 8 Assembly Constituencies including 203-Depalpur and the adjoining 26-Indore Parliamentary Constituency also had 8 Assembly Constituencies including 209-Mhow. The Commission upon considering the objections and suggestions finally determined the delimitation of both Dhar and Indore Parliamentary Constituencies. In its final determination the Commission included Mhow Assembly Constituency into Dhar Parliamentary Constituency by deleting the same from Indore Parliamentary Constituency as originally proposed. Consequently the Depalpur Assembly Constituency has been deleted from Dhar Parliamentary Constituency and added to Indore Parliamentary Constituency.

The present controversy centers on final determination of the delimitation of Indore Parliamentary Constituency.

9. The main issue that arises for our consideration in the present appeal is whether the Commission had complied with the mandatory requirement as provided for in Section 9 (2) of the Act, insofar as it concerns the shifting of Mhow Assembly Constituency from Indore Parliamentary Constituency and including the same into Dhar Parliamentary Constituency.

10. Shri Prashant Bhushan, learned counsel for the appellant submitted that the Commission in its final determination decided to shift Mhow Assembly Constituency from Indore Parliamentary Constituency and included the same into Dhar Parliamentary Constituency without complying with the mandatory requirements of Section 9 of the Act. The submission was that there was no proposal by the Commission for shifting Mhow Assembly Constituency from Indore Parliamentary Constituency to Dhar Parliamentary Constituency and on the other hand the Commission in its proposals clearly indicated Mhow Assembly Constituency to be a part of Indore Parliamentary Constituency for which there was no objection whatsoever from any quarter. The Commission held a public hearing on 22.2.2007 at Indore in which there was no suggestion that Mhow Assembly Constituency should be shifted from Indore Parliamentary Constituency to Dhar Parliamentary Constituency.

The Commission decided to interchange 203- Depalpur and 209-Mhow Assembly Constituencies between 25-Dhar (ST) and 26-Indore Parliamentary Constituencies.

11. Shri Ashok Desai, learned senior counsel for the respondents submitted that the decision of the Commission is not ultra vires the provisions of the Act and the Guidelines and Methodology of the Commission. The draft proposals of the Commission for the delimitation of the constituencies vide its Notification dated 14.5.2007 was for the whole of the State of Madhya Pradesh and not with reference to any one or more Parliamentary Constituencies. The Commission only proposed the names and extents of the constituencies which were subject to change including addition and deletion of one or more Assembly Constituencies in the light of suggestions/objections to be received from public and also in keeping with the provisions of the Act and the Guidelines and Methodology of the Commission. The decision of the Commission in including 203-Depalpur Assembly Constituency in 26-Indore Parliamentary Constituency was due to vocal demand made in the public meeting convened for further consideration of the proposals. As a consequence, to maintain equilibrium it became necessary for the Commission to shift Mhow Assembly Constituency for its addition to Dhar Parliamentary Constituency on the grounds of contiguity and compactness.

12. The short question that arises for consideration is whether Mhow Assembly Constituency could have been shifted from Indore Parliamentary Constituency for its inclusion into Dhar Parliamentary

Constituency without there being any proposal whatsoever.

13. In the present case, one Uma Narayan Singh Patel and others addressed a representation on 27.1.2007 to the Chairperson of the Commission raising number of objections to the proposal to include Depalpur Assembly Constituency in Dhar Parliamentary Constituency and suggested for its inclusion into Indore Parliamentary Constituency. It would be useful to refer in detail to the objections raised in this regard which are as under:

i) 80% of the villages of Depalpur Assembly Constituency are adjoining Indore city and the rest 20% are comprised within Indore city;

ii) 60% of the villages of Deepalpur Assembly Constituency are only 2 to 40 kms. from Indore city;

iii) The transport for communication from the villages of Deepalpur Assembly Constituency to Indore city is good and available in abundance while no transport for communication is available for Dhar Parliamentary Constituency which is hundred kilometers away from this Assembly Constituency;

iv) 30% of the villages of the Deepalpur Assembly Constituency are under Indore Development Authority and Municipal Corporation;

v) 40% of the villages of Deepalpur Assembly Constituency which revenue oriented are under Indore Tehsil. Due to this, the Revenue Inspector Circle will undergo a change including Hatod RIC.

vi) 2% of Revenue boundary of Deepalpur Assembly Constituency touches Dhar Parliamentary Constituency while 70% boundary of Mhow Assembly Constituency touches Dhar Parliamentary Constituency and Dhar Revenue Department.

14. It was clearly suggested that Mhow Assembly Constituency should be included in Dhar Parliamentary Constituency in place of Depalpur Assembly Constituency. In the public meeting held on 22.2.2007 at Indore, suggestions were made to shift Depalpur Assembly Constituency to the Indore Parliamentary Constituency from Dhar Parliamentary Constituency. The Commission after

considering the objections and suggestions received by it, and having found merit in the suggestions and representations for including Depalpur Assembly Constituency in Indore Parliamentary Constituency got published its final decision to shift Depalpur Assembly Constituency from Dhar Parliamentary Constituency and made it to be a part of Indore Parliamentary Constituency and in the process also shifted Mhow Assembly Constituency to Dhar Parliamentary Constituency.

15. The contention of the learned counsel for the appellant was that there were no objections to the proposals of the Commission in including Mhow Assembly Constituency as part of Indore Parliamentary Constituency and in such a situation there was no option to the Commission but to go ahead with its proposals to include Mhow in Indore Parliamentary Constituency.

16. Section 9 (1) of Act prescribes distribution of the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State as readjusted on the basis of 1971 census to single-member territorial constituencies and delimit them on the basis of the census figures as ascertained, at the census held in the year 1991. Section itself provides the factors to be taken into consideration including the provisions of the Constitution, the provisions of the Act specified in Section 8 and the following provisions, namely:-

(a) All 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;

(b) Every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency;

(c) Constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and

(d) Constituencies in which seats are reserved for the Scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total is the largest.

17. Section 9(2) of the Act mandates the Commission to follow the following steps before determining the delimitation of any Constituency, namely:

- a) Publish its proposal for the delimitation of the constituency, along with dissenting proposals, if any;

- b) Specify a date on which the proposals shall be further considered by it;

- c) Consider all objections and suggestions which may have been received by it before the date so specified and for the purpose of such consideration hold one or more public sittings; and

- d) Only thereafter the Commission can determine the delimitation of a Constituency.

18. The most important aspect of the matter required to be borne in mind is that the proposals for delimitation published under Section 9 (2) of the Act are with regard to the whole of the State. The proposals are not a constituency-centric one. Determining the delimitation of Parliamentary Constituencies and Assembly Constituencies is a very complex and lengthy process. Section 9 (1) of the Act mandates the Commission as to what are the factors apart from the provisions of the Constitution and provisions of the Act required to be taken into consideration which are noticed herein above. Section 9(2) mandates the Commission to publish its proposals for the delimitation of the constituencies in the manner provided there under. It is true, determination of the delimitation of Parliamentary Constituencies and Assembly Constituencies, as the case may be, shall be only after consideration of all objections and suggestions which may have been received by the Commission before the specified date for which purposes the Commission may hold one or more public sittings at such place or places in each State as it thinks fit. The Commission is not required to hold public meeting in each and every Parliamentary Constituency. What the Commission required is to consider the objections and suggestions for its proposals before determining the delimitation of the constituencies in the entire State. The proposals cannot emanate from any interested person. The distinction between the Commission's proposals and objections and suggestions in response to such proposals is to be borne in mind. Every suggestion or objection cannot ultimately result in any fresh proposal by the Commission. The Commission is not under any legal or Constitutional obligation to go on issuing any revised proposals depending upon every objection and suggestion as may be received by it in response to its proposals. Since the exercise of the delimitation is not with reference to any particular constituency, the suggestions or objections, as the case may be, in respect of one constituency may have their impact at least on one or more of the adjoining constituencies. In the present case, various objections were lodged and suggestions were made as to why Depalpur

Assembly Constituency is to be included in Indore Parliamentary Constituency in which the Commission found merit and those suggestions do have a direct bearing on the delimitation of Indore Parliamentary Constituency as well. The cascading effect cannot be avoided. The Commission could not have retained Depalpur Assembly Constituency and as well as Mhow Assembly Constituency in Indore Parliamentary Constituency in which event Indore Parliamentary

Constituency would have 9 Assembly Constituencies while Dhar Parliamentary Constituency would have only 7 Assembly Constituencies resulting in avoidable malappropriation. The Commission's power to determine delimitation of the constituency is not unlimited but is structured by the provisions of the Act and more particularly by Sections 8 and 9 of the Act apart from the Constitution (Eighty-fourth Amendment) Act, 2001 and Constitution (Eighty-seventh Amendment) Act, 2003 which have, inter alia, amended Articles 81, 82, 170, 330 and 332 of the Constitution of India. The effect of these amendments to the Constitution inter alia is that each Parliamentary Constituency in each State shall be an integral multiple of the number of seats comprised therein and no Assembly Constituency shall extend to more than one Parliamentary Constituency. The Commission in the present case appears to have determined the delimitation of both Dhar and Indore Parliamentary Constituencies in such a manner whereby each of the Parliamentary Constituency shall consist of equal number of 8 Assembly Constituencies. It appears the Commission had also taken into consideration the contiguity, geographical features, public convenience etc. before finally determining the delimitation of both the Parliamentary Constituencies. We find no illegality to have been committed by the Commission.

19. In the present case, the High court of Madhya Pradesh at Jabalpur summarily dismissed the writ petition under Article 226 of the Constitution praying for writ of certiorari for quashing the notification issued in pursuance of sub-section (1) of Section 10 of the Act in respect of the delimitation of Indore Parliamentary Constituency. The petition was rejected on the short ground that the order of the Commission once published under Section 10(2) of the Act is law made under Article 327 of the Constitution and cannot be called in question in any court by virtue of Article 329 of the Constitution.

20. The learned counsel for the appellants submitted that only such decision of the Commission determining delimitation of Constituencies after following the mandatory procedure under Section 9 (2) of the Act, if it is published, becomes a force of law and it cannot be questioned in any court. Thus, the protection under Section 10 (2) of the Act as well as Article 329(a) is available only when the mandatory requirements of Section 9(2) are complied with by the Commission. In support of the submission reliance was placed on the decision of this Court in *State of U.P. Vs. Pradhan Singh Khesttra Samiti* [1995 suppl. (2) SCC 305.

21. The decision in *Pradhan (supra)* upon which reliance has been placed by the learned counsel for the appellants in no manner supports the contention urged before us. On the other hand, this Court found the approach of the High Court to be objectionable for it had gone into the question of validity of the delimitation of the constituencies and also allotments of seats to such constituencies although clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters. In the said case, this court dealt with the provisions of Articles 243-C, 243-K and 243-O and the provisions of Panchayat Raj Act, 1947 and Section 9 of the Delimitation Act, 1950. It was observed:

" 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 this connection, refer to a decision of this Court in *Meghraj Kothari v. Delimitation Commission*³. 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. Although an order under Section 8 or Section 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 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), 11-F 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 nor 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 31-8-1994."

22. It is true the observations made in this judgment "that neither the delimitation of the Panchayat area nor the constituencies in the said area and the allotments of seats to the constituencies could have been challenged nor the court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given" may lend some support to the submission made by the learned counsel for the appellant that there could be a challenge in case where final determination of delimitation of constituencies was made without inviting any objections whatsoever. But that is not the ratio of the judgment. This court in *Pardhan* (supra) was not considering any similar issue as the one that had arisen for our consideration in the present case. This Court did not take any view that the proposals in respect of each constituency shall have to be treated as an independent proposal and the Commission's power to determine delimitation of the constituencies is with reference to each constituency. The objections and/or suggestions, as the case may be, are required to be taken into consideration treating the proposals as for whole of the State and delimitation of the constituencies with reference to a State as a Unit.

23. In *Meghraj Kothari Vs. Delimitation Commission & Ors.* [(1967)1 SCR400], a Constitution Bench of this court while interpreting Sections 8, 9, and 10 of the Delimitation Commission Act, 1962 which are in pari materia with the provisions of the present Act, observed:

"In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the official gazettes of the States concerned, these matters could no longer be reargued in a court of law. There seems to be very good reason behind such a provision. If the orders made under Sections 8 and 9 were not to be treated as final, the effect 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. Section 10 (2) of the Act clearly demonstrates the intention of the Legislature that the orders under Sections 8 and 9 published under Section 10 (1) were to be treated as law which was not to be questioned in any court.

It is true that an order under Section 8 or 9 published under Section 10 (1) is not part of an Act of Parliament, but its effect is to be the same."

24. The Constitution Bench went to the extent of saying that "an examination of Sections 8 and 9 of the Act shows that the matters therein dealt with were not to be subject to the scrutiny of any court of law..... The provision of Section 10(4) puts orders under ss 8 and 9 as published under Section 10 (1) in the same street as a law made by Parliament itself which..... could only be done under Article 327, and consequently the objection that the notification was not to be treated as law cannot be given effect to".

CONCLUSION:

25. In the present case, the Commission finally determined the delimitation of Parliamentary Constituencies in the State of Madhya Pradesh after considering all objections and suggestions received by it before the specified date and got published its orders in the Gazette of India and in the Official Gazette of the State as is required under Section 10 (1) of the Act. The order so published puts them "in the same street as a law made by Parliament itself". Consequently that Notification is to be treated as law and required to be given effect to.

26. For all the aforesaid reasons, we find no merit in this appeal. The appeal shall accordingly stand dismissed with no order as to costs.

