

MADHYA PRADESH HIGH COURT

Kalyansingh Rathor

Vs.

State of M.P

Misc. Petn. No. 657 of 1970
(Bishambhar Dayal,C.J. and R.J. Bhave, J.)

27.10.1971

JUDGMENT

Bishambhak Dayal, C.J.

1. This is a petition by three members of Gram Panchayats who have challenged the validity of the delimitation of constituencies for the block declared by notification (Annex-3 to the petition) published in the Gazette dated 25th November 1970 and the notification issued by the Collector (Annex-4 to the petition) dated 4/12th December 1970 determining the reserved constituencies.

2. The contention of the petitioners is that the constituencies for the block were finally declared by notification (Annex-1 to the petition) published in the Gazette dated 26th September 1969 and accordingly the petitioners among others got themselves elected to the Gram *Panchayat* with a 'view to being elected for the block *Panchayat* and for further elections on that basis; and that after the petitioners had been elected from the Gram *Panchayats* the State Government altered the constituencies of the block so that the petitioners are now unable to contest the elections for the block *Panchayat*. It is alleged that the Government had no power to alter the constituencies once finally determined so as to affect the future prospects of the petitioners. It is further contended that the Collector by Annexure-4 has reserved wrong constituencies for the election of members of the scheduled castes and scheduled tribes. Several objections have been taken for the invalidity of this notification determining the reserved seats. But since after hearing learned counsel for both the parties we are satisfied that tills determination by the Collector is without jurisdiction, we will deal only with that matter in connection with this notification.

3. On behalf of the respondents, so far as the alteration of the constituencies is concerned it is contended that the State Government has absolute power without any restriction to fix the constituencies as and when the Government so considers fit and that the power exercised by the Government cannot be challenged except on the proof of mala fides which have not been alleged in this petition. Section 21 of the M.P. General Clauses Act is relied upon for the power in the Government to make alterations in any notification once issued by the Government. The contention on behalf of the petitioners in this respect is that the intention of the Legislature in passing the *Panchayats* Act is not to give this power of alteration of constituencies to the State Government. The submission is that under Section 360 of the M.P. *Panchayats* Act, the Act has provided for alteration of Gram Sabhas and has given that power to the 'Government. Under Section 370 of the Act power has been given to the Government to alter the limits of a block. But no similar power to alter the constituencies in a block has been given in the Act and the intention must therefore be inferred that the State Government did not possess the power to alter the constituencies.

4. After hearing learned counsel for both the parties we are not impressed by this argument on behalf of the petitioners. Constituencies could not be unchangeable for ever. So far as Sections 360 and 370 are concerned, they relate to an addition to or subtraction from the area of a Gram Sabha or a particular block. The fixation of constituencies is not a matter of adding to or subtracting from a particular Gram Sabha or block. It is a matter of redistribution of a Gram Sabha into constituencies. That may be necessitated by several reasons from time to time e.g., efflux of population from one Gram Sabha to another or an increase or decrease of population at one place or another and so on. The Legislature did not consider it necessary to provide any standard or circumstances under which only such an amendment could be made by the Government. The power to make amendments in the constituencies in the same block was, therefore, left in the discretion of the Government. Since the power has been vested in the Government, it is expected that the Government will exercise that power in a responsible way and only when it is necessary in the circumstances of the case, and will not, merely for the fun of it, start altering constituencies and including Gram Sabha from one constituency in another. However, it is worth noting that in the present case after the constituencies had been finally determined by notification published in the Gazette dated 26th September 1969, no reason was given why these constituencies were altered in about a year in November 1970. particularly when the process of

election had already started on the basis of the earlier notification and elections of the Gram Panchayats had already been held on that basis. In the return also no reason has been shown why it was necessary to make the amendments. However, in this case even the petitioners do not allege any mala fides for this amendment and since power has been exercised which the Government did possess, it must be assumed that it was for good reasons, although the reasons have not been expressed. We are, therefore, not prepared in this case to declare the notification altering the constituencies published in the Gazette dated 25th November 1970 as invalid.

5. With regard to the notification (Annex-4 to the petition) issued by the Collector determining the constituency for scheduled castes and scheduled tribes, the power has to be exercised under Rule 5 of the Madhya Pradesh Janapada Panchayat Election and Co-option Rules, 1963, This Rule enjoins:

"Such seats shall, as far as practicable, be reserved in the constituency in which the population of the Scheduled Castes or Scheduled Tribes, as the case may be, is most concentrated."

On a perusal of the said notification, it appears that constituency No.18 has been declared as reserved for scheduled tribes. But on a look at the last census, the fact is that constituency No.19 has 72.4 per cent, of scheduled tribe population while constituency No.18 has only 28 per cent such population. This declaration was, therefore, wholly wrong and without jurisdiction. We accordingly quash the said notification.

6. The petition is, therefore, partly allowed. The notification (Annex-4) dated 4/12th December 1970 issued by the Collector is declared ultra vires and is quashed. Parties will bear their own costs of this petition. The outstanding amount of the security deposit shall be refunded to the petitioners.

Petition partly allowed.