

Atma Singh & Ors vs State Of Punjab & Ors on 2 April, 1981

Equivalent citations: 1981 AIR 1173, 1981 SCR (3) 340, AIR 1981 SUPREME COURT 1173, 1981 REV LR 306, (1981) MAHLR 192, 1981 UJ (SC) 356, (1981) CURLJ(CCR) 328, 1981 (2) SCC 657

Author: A.P. Sen

Bench: A.P. Sen, Y.V. Chandrachud, V. Balakrishna Eradi

PETITIONER:

ATMA SINGH & ORS.

Vs.

RESPONDENT:

STATE OF PUNJAB & ORS.

DATE OF JUDGMENT 02/04/1981

BENCH:

SEN, A.P. (J)

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SEN, A.P. (J)

CHANDRACHUD, Y.V. ((CJ)

ERADI, V. BALAKRISHNA (J)

CITATION:

1981 AIR 1173

1981 SCR (3) 340

1981 SCC (2) 657

1981 SCALE (1)566

ACT:

Punjab Municipal Act, 1911, read with Election Rules, 1952 and Delimitation of Wards of Municipalities Rules, 1972-State Government notifies inclusion of certain local areas within the limits of Sunam Municipality under sub-section (3) of section 5 of the Act-operation of the notification stayed by the High Court and, therefore, the State Government without reconstituting the Municipality into new wards held elections on the basis of the old municipal limits in view of the obligatory proviso to sub-section (3) of section 13 of the Act inserted by Punjab Act 10 of 1978 as amended by Punjab Act 2 of 1979-Propriety of the action of the State to hold elections in the municipality without delimitation of wards and preparation of fresh electoral rolls and validity of the elections.

HEADNOTE:

In exercise of their powers under sub-section (3) of section 5 of the Punjab Municipal Act, 1911, the State Government by its Notification dated August 2, 1976 directed inclusion, in Sunam Municipality, of eight local areas including Moranwali Gram Panchayat, which challenged the validity of the said notification by a writ petition filed before the High Court and obtained stay of operation.

Under the Election Rules of 1952 and the Delimitation of Wards of Municipalities Rules, 1972, whenever there is a change in the limits of the municipality the State Government cannot proceed to hold election of councillors without delimitation of the municipality into wards. However, since proviso to subsection 3 of section 13 of the Act, inserted by Punjab Act 18 of 1978 as amended by Punjab Act 2 of 1979 made it obligatory for the state Government to hold the election before June 30, 1979, along with those of the 42 other municipalities the election of the councillors of the Sunam Municipality was also held on June 10, 1979 on the basis of the old municipal limits, that is, from the existing 15 wards.

On June 23, 1979 the appellants who seek to represent about 1,000 voters from the local areas newly added to the municipal limits, filed a writ petition in the High Court challenging the election as null and void on the ground that there was no delimitation of wards and no fresh electoral rolls were prepared. The High Court by its order dated July 10, 1979 declined to set aside the elections held, but directed that the local areas be given representation under sub-section(5)

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of section 5 of the Act. Hence the appeal after obtaining special leave of the Court.

Dismissing the appeal, the Court

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HELD: 1. The State Government without reconstituting a municipality into new wards cannot proceed to hold an election of councillors, when there is an extension of the municipal limits. [346 C]

2. The whole purpose of delimitation of municipality into wards is to ensure that every citizen should get a fair representation in them municipalities. When a municipality is reconstituted by the inclusion of any local area within the limits of a municipality under sub-section (3) of section 5 or by the exclusion of any local area from the limits of a municipality under section 7, that is, when there is an alteration of the limits of the municipality, there must of necessity be a division of the reconstituted municipality into new wards without which the elections cannot be held. There can be no disenfranchisement of part of the electorate of a municipality. [345 C-D]

3. But, in the instant case, the said principle could not be applied due to the stay order passed by single Judge

of the Punjab High Court which was in force from August 2, 1978 to October 23, 1978 and thereafter till April 1, 1980 consequent to the order of stay of dispossession by the Division Bench, dated December 19, 1978 in the Letters Patent Appeal preferred by the Gram Panchayat, Moranwali. When a local area sought to be brought within the limits of the municipality by the issue of a notification under sub-section (3) of section 5 was kept out of such limits by reason of the stay order passed by the Division Bench there could, obviously, be no delimitation of the municipality into new wards. [346 C, D; 347 B, A]

4. To contend that with the dismissal of the writ petition on October 23, 1978, the impugned notification was brought into effect and therefore, the State Government could not proceed with election without delimitation of wards and preparation of fresh electoral rolls is incorrect. It is equally incorrect to say that with the vacation of the stay by the dismissal of the Letters Patent Appeal on April 1, 1980 the whole election would be invalidated. [346 F, 347 E]

5. The Election held on June 10, 1979 were valid and the councillors elected are entitled to run their full term of five years as provided in section 13. The State Government acted with the best of intentions in deciding to hold the elections. The State Government had no other alternative but to hold the election of the councillors on the basis of the existing limits of the municipality, that is, from the existing 15 wards due to the amendment of proviso to subsection (3) of section 13 of the Act by Punjab Act 2 of 1979 which made it obligatory for the State Government to hold the elections before June 30 1979. [347 E,D]

Bhaichandbhai Maganlal Shah v. The State of Gujarat and Ors., 8 Guj L.R. 210, approved.

6. In view of the fact that a large number of inhabitants of the local areas brought within the municipal limits under sub-section (3) of section 5 of the Act, 342

who were otherwise eligible to be enrolled as voters but for the stay by the High Court, have thereby been deprived not only of their valuable right to vote at the election but also the right to contest as a candidate for election as a councillor from any of the wards of the municipality or to the office of the President or the Vice-President, the Court directed; (1) that the local areas included in the municipality should be formed into a ward or wards and representation given to them under sub-section (5) of section 5 of the Act; (ii) that the term of the councillors so elected from such local areas shall be co-terminus with the term of the councillors already elected from the existing 15 wards and (iii) that this shall be a purely interim arrangement necessitated by the somewhat unfortunate stay order passed by the High Court and that obviously it

cannot extend beyond the term of the present council. [347 G, 348 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1958 of 1980.

Appeal by Special Leave from the Judgment and Order dated 20th July 1979 of the Punjab and Haryana High Court in Civil Writ Petition No. 2135/79.

P. P. Rao and C. M. Nayar for the Appellants.

O. P. Sharma and M M. Dhillon for Respondents Nos. 1-5. S. M. Ashri & G. K. Bansal for the other appearing Respondents.

The Judgment of the Court was delivered by SEN, J. This appeal by special leave from a judgment of the Punjab & Haryana High Court, raises a question of some complexity. The question is when there is a notification issued under sub-s. (3) of s. 5 of the Punjab Municipal Act, 1911, for inclusion of certain local areas within the limits of a municipality, whether it is permissible for the State Government to hold elections in the municipality without delimitation of wards and preparation of fresh electoral rolls. It arises under the following circumstances.

In exercise of their powers under sub-s. (3) of s. 5 of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Act'), the State Government of Punjab by notification dated August 2, 1976, directed inclusion of certain local areas. The local areas so included are: (1) Moranwali Panchayat Area, (2) Grain Market Area, (3) Guja Peer Basti, (4) Jakhal Road, (5) ITI Area, (6) BDO Block, (7) Tehsil Court Area and (8) Thei Area. The Gram Panchayat, Moranwali challenged the validity of the said notification by a writ petition filed before the High Court. A learned Single Judge granted an ad interim stay staying the operation of the impugned notification. The writ petition was dismissed by the learned Single Judge on October 23, 1978. Thereupon, the Gram Panchayat preferred a Letters Patent Appeal and prayed for grant of stay of operation of the impugned notification. On December 19, 1978, a Division Bench passed the following order:

Admitted. Stay dispossession ad interim. Notice regarding stay.

It is common ground that eventually the stay was confirmed by the Division Bench and remained operative till April 1, 1980 when the Letters Patent Appeal was dismissed.

In the meanwhile, the State Government decided to hold the elections of councillors of the Sunam Municipality on the basis of the old municipal limits, i.e. from the existing 15 wards, along with those of the 42 other municipalities, since proviso to sub-s. (3) of s. 13 of the Act, inserted by Punjab Act 18 of 1978 as amended by Punjab

Act 2 of 1979 made it obligatory for the State Government to hold such elections before June 30, 1979. Accordingly, the Deputy Commissioner issued a notification on April 6, 1979 under r. 3 of the Election Rules, 1952, specifying that the elections in the municipality shall be held on June 10, 1979. On June 23, 1979, i.e. after the whole process of election was over, the appellants, who seek to represent about 1000 voters from the local areas newly added to the municipal limits, filed a writ petition in the High Court challenging the election as null and void on the ground that there was no delimitation of wards and no fresh electoral rolls were prepared. The High Court, by its order dated July 20, 1979, declined to set aside the elections held, but directed that the local areas be given representation under sub-s. (5) of s. 5 of the Act.

In support of the appeal, there is a two-fold contention advanced. In the first place, the submission is that when a local area is included within a municipality, elections cannot be held without delimitation of wards and preparation of fresh electoral rolls; and secondly, the submission is that, in any event, with the vacation of stay, the election was invalidated. The first of these submissions is unexceptionable, but it does not arise, and the second appears to us to be wholly devoid of substance.

Sub-s. (5) of s. 5 of the Punjab Municipal Act, 1911, which is relevant for our purposes, reads as follows:

(5) When any local area included in a municipality under sub-section (3) is a Sabha area, or a part thereof under the Punjab Gram Panchayat Act, 1952, representation to the inhabitants of the local area so included on the committee of the municipality, in which local area is included, shall be given in the prescribed manner.

The Act does not prescribe the manner of giving representation to the inhabitants when any local area included in a municipality under sub-s. (3) of s. 5 is a Sabha area, unlike that in the case of a municipality or a notified area for which an express provision is made in sub-s. (6) thereof. The matter, therefore, falls to be governed by the Election Rules, 1952 and the Delimitation of Wards of Municipalities Rules, 1972, framed by the State Government in exercise of their powers under s. 240 (1) (b) and (c) and s. 258 of the Act.

Whenever there is a change in the limits of a municipality, the State Government cannot proceed to hold election of councillors without delimitation of the municipality into wards. The delimitation of wards, a delicate and important task, is entrusted to a Delimitation Board constituted under r. 3 of the Delimitation of Wards of Municipalities Rules, 1972 and under r. 4 thereof it is the duty of the Delimitation Board to effect a re-division of a municipality. That rule reads thus:

4. Functions of the Board-it shall be the duty of the Board:-

(i) to divide the Municipality into such number of wards as may be necessary, having regard to the number of elected members prescribed by the State Government, for the Committee, and the number of seats reserved for members of the Scheduled

Castes; and

(ii) to re-adjust the wards as and when the limits of the Municipality are altered or there is increase in population of the Municipality or there is abnormal variation in population or voting figures of some of the wards of the Municipality, which requires, such re-adjustment.

In the delimitation of wards, the Board must observe the principles laid down in r. 6, namely, (1) all wards shall, as far as practicable, be geographically compact areas, and in delimiting them due regard shall be had to physical features, existing boundaries of administra-

tive units, if any, facilities of communication and public convenience; (2) wards in which seats are reserved for the Scheduled Castes shall be located, as far as practicable, in those areas where the proportion of their population to the total population of the municipality is the largest; and (3) each municipality shall be divided into wards in such manner that the population of each ward, as far as practicable, is the same throughout the municipality, with a variation upto 10 per cent above or below the average population figures. While making a re-division, it may not be possible to achieve mathematical perfection, but there must definitely be a substantial compliance with the requirement that every person should have an equal vote.

The whole purpose of delimitation of municipalities into wards is to ensure that every citizen should get a fair representation in the municipalities. When a municipality is re-constituted by the inclusion of any local area within the limits of a municipality under sub-s. (3) of s. 5 or by the exclusion of any local area from the limits of a municipality under s. 7, i.e. when there is an alteration of the limits of the municipality, there must of necessity be a division of the re-constituted municipality into new wards without which the elections cannot be held. There can be no disenfranchisement of a part of the electorate of a municipality. The question was dealt with at some length by the Gujarat High Court in *Bhaichandbhai Maganlal Shah v. The State of Gujarat & Ors.* and it was observed:

It must follow logically and inevitably from this proposition that the constitution of wards dividing the whole of the municipal district is a sine qua non of a valid election. If no wards at all are constituted in the municipal district, the machinery of election cannot go through and equally the machinery of election cannot go through if wards are constituted in respect of a part of the municipal district and the other part is not divided into any ward or wards. In such a case there would be lists of voters for the wards which are constituted out of a part of the municipal district but there would be no lists of voters so far as the other part of the municipal district is concerned and no one from that part would be qualified to vote or to stand as a candidate for the election and no Councillors being elected by that part, there would be no representation of that part on the municipality. Where such a situation arises, it is difficult to see how the Municipality can be said to be a Municipality for the whole of the municipal district within the meaning of s. 9. We approve of the view taken by the Gujarat High Court.

There can be no dispute with the principle that the State Government without re-constituting a municipality into new wards, cannot proceed to hold an election of councillors, when there is an extension of the municipal limits, but the difficulty is about the applicability of that principle to the facts of the present case. There is no denying the fact that the effect of the stay order passed by the learned Single Judge staying the operation of the notification issued under sub-s. (3) of s. 5 was to put the said notification in abeyance, with the result that the local areas to which it related were not brought within the municipal limits. It is also an undisputed fact that the stay order passed by the learned Single Judge was in force from August 2, 1978 to October 23, 1978. It is, however, urged that with the dismissal of the writ petition by the learned Single Judge on October 23, 1978, the impugned notification was brought into effect and, therefore, the State Government could not proceed with the election without delimitation of wards and preparation of fresh electoral rolls. We are afraid, the contention cannot be accepted.

The case presents a rather disturbing feature. There were drastic changes brought about in s. 13 of the Act dealing with the term of councillors leading to the supersession of all municipalities in the State and casting an obligation on the State Government to hold fresh elections of councillors, before June 30, 1979. In these circumstances, the Division Bench should have acted with greater circumspection. On the contrary, the Division Bench, on December 19, 1978 passed a stay order staying the dispossession of the Gram Panchayat although the Gram Panchayat had applied for staying the operation of the impugned notification. It is somewhat unfortunate that the stay order passed by the Division Bench was couched in rather ambiguous terms, but it had virtually the same effect as the one passed by the learned Single Judge. It is difficult to comprehend the distinction between "stay of dispossession of the Gram Panchayat" and "stay of operation of the impugned notification". Apparently, the Division Bench, without applying its mind, passed an order staying dispossession of the Gram Panchayat, failing to realise that the effect of stay would dislocate the whole electoral process. When a local area sought to be brought within the limits of the municipality by the issue of a notification under sub-s. (3) of s. 5, was kept out of such limits by reason of the stay order passed by the Division Bench, there would obviously be no delimitation of the municipality into new wards.

There was some doubt created about the purport and effect of the stay order passed by the Division Bench. This brought about an inevitable chain of events. After the Division Bench passed the order on December 19, 1978, the State Minister for Transport who represented the Sabha Areas in the State Legislative Assembly wrote to the Minister for Local Self-Government to postpone the elections scheduled to be held for the municipality. When the exact nature of the stay order was brought to the notice of the Minister, he agreed with the view of the Local Self-Government Department that the elections to the municipality could not be held without a delimitation of the municipal area. Eventually, the State Government had no other

alternative but to hold the election of the councillors on the basis of the existing limits of the municipality, i.e. from the existing 15 wards, due to the amendment of Proviso to sub-s.(3) of s.13 of the Act by Punjab Act 2 of 1979 which made it obligatory for the State Government to hold the election before June 30, 1979. There can be no doubt that the State Government acted with the best of intentions in deciding to hold the elections. The election so held on June 10, 1979 was a valid election and the councillors elected are entitled to run their full term of five years as provided by sub-s.(2) of s. 13. The contention that with the vacation of the stay by the dismissal of the Letters Patent Appeal on April 1, 1980, the whole election would be invalidated, must, therefore, fail.

We are distressed to find that due to the stay order passed by the Division Bench a large number of inhabitants of the local areas brought within the municipal limits under sub s.(3) of s.5 of the Act, who were otherwise eligible to be enrolled as voters, have thereby been deprived not only of their valuable right to vote at the election but also of the right to contest as a candidate for election as a councillor from any of the wards of the municipality or to the office of the President or the Vice President. But there is little that can be done in the matter at this stage.

Driven to this situation brought about by the stay orders of the High Court, there is no other alternative but to direct that the local areas included in the municipality under sub-s. (3) of s. 5 should be formed into a ward or wards and representation given to them under sub-s. (5) of s. 5 of the Act. The term of the councillors so elected from such local areas shall be co-terminus with the term of the councillors already elected from the existing 15 wards. We are assured by learned counsel for the State that the State Government shall take immediate steps to comply with this direction.

This shall be a purely interim arrangement necessitated by the somewhat unfortunate stay orders passed by the High Court. The interim arrangement cannot obviously extend beyond the term of the present council.

We hope and trust that the State Government shall, in the meanwhile, take steps to constitute a Delimitation Board under r. 3 of the Delimitation of Wards of Municipalities Rules, 1972. After the delimitation of the municipality into new wards, the State Government shall proceed to re-fix the number of councillors of the re-constituted municipality under s. 11, prescribe the number of elected councillors afresh as required under cl. (a) of sub-s. (1) of s. 12 of the Act and issue necessary directions for the preparation of fresh electoral rolls as required under rr. 8 and 8A of the Election Rules. 1952.

In the result, the appeal fails and is dismissed. There shall be no order as to costs.

S.R.

Appeal dismissed.

