

Kishorchandra Chhanganalal Rathod

v.

Union of India & Ors.

(Civil Appeal No. 7930 of 2024)

23 July 2024

[Surya Kant and Ujjal Bhuyan, JJ.]

Issue for Consideration

Whether exercise of statutory powers under the Delimitation Act, 2002 are insusceptible to powers of judicial review under Article 226 of the Constitution of India.

Headnotes[†]

Constitutional law – Limitations on judicial scrutiny on electoral matters under Article 329 of the Constitution of India and scope of judicial review under Article 226 of the Constitution of India over exercise of power under the Delimitation Act:

Held: Although Article 329 of the Constitution of India undeniably restricts the scope of judicial scrutiny regarding the validity of any law relating to delimitation of constituencies or allotment of seats to such constituencies, it cannot be construed to have been imposed for every action of delimitation exercise – If judicial intervention is deemed completely barred, citizens would not have any forum to plead their grievances, leaving them solely at the mercy of the Delimitation Commission – As a constitutional court and guardian of public interest, permitting such a scenario would be contrary to the Court's duties and principle of separation of powers – Reliance placed on the Judgment of this Hon'ble Court in Dravida Munnetra Kazhagam (Dmk) v. Secretary Governors Secretariat and Ors. [\[2019\] 14 SCR 704](#) : (2020) 6 SCC 548 : 2019 INSC 1326 and State of Goa v. Fouziya Imtiaz Shaikh [\[2021\] 2 SCR 770](#) : (2021) 8 SCC 401 : 2021 INSC 179, where this Hon'ble Court held that a Constitutional Court can intervene for facilitation of elections, or where a case of malafide or arbitrary exercise of power is made out. [Paras 5 and 6]

Constitutional Law – Nothing precludes a Constitutional Court from deciding validity of orders passed by Delimitation Commission:

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Held: While Courts shall always be guided by settled principles of scope, ambit and limitation on the exercise of judicial review in delimitation matters, there is nothing that precludes them to check the validity of orders passed by Delimitation Commission on the touchstone of the Constitution – If the Order is found to be manifestly arbitrary and irreconcilable to the constitutional values, the Court can grant the appropriate remedy to rectify the situation – A Constitutional Court can undertake the exercise of judicial review within the limited sphere at an appropriate stage. [Paras 8 and 9]

Case Law Cited

Dravida Munnetra Kazhagam (Dmk) v. Secretary Governors Secretariat and Ors. [2019] 14 SCR 704 : (2020) 6 SCC 548; *State of Goa v. Fouziya Imtiaz Shaikh* [2021] 2 SCR 770 : (2021) 8 SCC 401 – relied on.

Meghraj Kothari v. Delimitation Commission & Ors. [1967] 1 SCR 400 : 1966 SCC OnLine SC 12 : 1966 INSC 171 – referred to.

List of Acts

Constitution of India, 1950; Delimitation Act, 2002.

List of Keywords

Scope of judicial interference under Delimitation Act; Judicial review of electoral matters.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7930 of 2024
From the Judgment and Order dated 21.09.2012 of the High Court of Gujarat at Ahmedabad in SCA No. 10136 of 2012

Appearances for Parties

Mrs. Christi Jain, Ms. Pratibha Jain, Puneet Jain, Mann Arora, Ms. Akriti Jain, Harsh Jain, Advs. for the Appellant.

K M Natraj, A.S.G., Kanu Agarwal, Ms. Swati Ghildiyal, Ms. Bani Dikshit, Kartikay Aggarwal, Abhishek Kumar Pandey, Raman Yadav, Mukesh Kumar Singh, Ms. Ameyavikrama Thanvi, Chitvan Sinhal, Arvind Kumar Sharma, Sidhant Kumar, Sahil Tagotra, Ms. Manyaa Chandok, Sujay Jain, Advs. for the Respondents.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Order**

1. Leave granted.
2. The appellant is aggrieved by the judgment dated 21.09.2012, passed by a Division Bench of the Gujarat High Court in terms whereof the Writ Petition, filed by the appellant, challenging the delimitation exercise, which resulted into reservation of Bardoli Legislative Assembly Constituency, Gujarat for Scheduled Caste community was dismissed. The said constituency was reserved by the Delimitation Commission in exercise of its powers under the Delimitation Act, 2002.
3. The High Court, vide the impugned judgment, relied upon Article 329 of the Constitution and held that there is a bar to interference by the Court in electorate matters and as such, the appellant's challenge to the Delimitation Commission's Order No. 33, dated 12.12.2006, which had received the assent of the President of India, could not be called in question in any court of law. In this manner, the High Court dismissed the writ petition at the threshold on the anvil of Article 329(a) of the Constitution, which states:

*“329. Bar to interference 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 327 or article 328, shall not be called
in question in any court.”*

4. As regards to the factual dispute and/or merits of the appellant's claim is concerned, we do not deem it necessary to go into the validity of Commission's order as the controversy pertains to the delimitation exercise, which was undertaken way back in the year 2006. It is not in dispute that much water has flown under the bridge since then, including the undertaking of a fresh delimitation exercise by the competent authority.
5. We, however, do not approve the view taken by the High Court that the order of delimitation of constituencies, issued in exercise of statutory powers under the Delimitation Act, is entirely insusceptible

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to the powers of judicial review exercisable under Article 226 of the Constitution. Although Article 329 undeniably restricts the scope of judicial scrutiny re: validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, it cannot be construed to have imposed for every action of delimitation exercise. If judicial intervention is deemed completely barred, citizens would not have any forum to plead their grievances, leaving them solely at the mercy of the Delimitation Commission. As a constitutional court and guardian of public interest, permitting such a scenario would be contrary to the Court's duties and the principle of separation of powers.

6. This understanding is supported by a three-judge bench decision of this Court in Dravida Munnetra Kazhagam v. State of T.N.¹ where the Court was called upon to interpret Articles 243O and 243ZG of the Constitution, which mirror the aforementioned Article 329. Rejecting the contention that these provisions place a complete bar on judicial intervention, it was noted that a constitutional Court can intervene for facilitating the elections or when a case for *mala fide* or arbitrary exercise of power is made out. Using this, the Court directed delimitation to be conducted for nine new districts. Recently, a three-judge bench of this Court in State of Goa v. Fouziya Imtiaz Shaikh,² affirmed the ratio of the above-cited decision while discussing principles on Article 329(a), and rejected the contention which sought to prove it as *per incuriam*.
7. Therefore, while the Courts shall always be guided by the settled principles regarding scope, ambit and limitations on the exercise of judicial review in delimitation matters, there is nothing that precludes them to check the validity of orders passed by Delimitation Commission on the touchstone of the Constitution. If the order is found to be manifestly arbitrary and irreconcilable to the constitutional values, the Court can grant the appropriate remedy to rectify the situation.
8. In order to prove that any kind of judicial intervention is fully prohibited, the respondents relied upon a Constitution Bench decision of this Court in Meghraj Kothari vs. Delimitation Commission and others.³ A closer examination of the aforementioned case, however, would show that the Court in that case restricted judicial intervention when

1 [2019] 14 SCR 704 : (2020) 6 SCC 548, para 14

2 [2021] 2 SCR 770 : (2021) 8 SCC 401, para 67

3 [1967] 1 SCR 400 : 1966 SCC Online SC 12

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the same would unnecessarily delay the election process. This is writ large from the following paragraph, where the Court explicated the reason behind adopting the hands-off approach:

"20. 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 reagitated 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."

[emphasis supplied]

9. Hence, the aforementioned judgement does not support the respondents' contention regarding complete restriction on judicial review. A constitutional court can undertake the exercise of judicial review within the limited sphere at an appropriate stage.
10. Consequently, the appeal is allowed in part, and para 3 of the impugned judgment—to the extent it held that there is a bar to challenge the order of delimitation of constituencies is set aside. The appellant, if so advised, may approach the High Court keeping in view the subsequent events. However, at present, no ground has been made out to interfere with the exercise of delimitation of constituencies and consequential reservation thereof, which was undertaken in the year 2006.

Result of the case: Appeal partly allowed.

[†]*Headnotes prepared by:* Prastut Mahesh Dalvi, Hony. Associate Editor
(Verified by: Abhinav Mukerji, Sr. Adv.)