



2024 INSC 579

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.7930 OF 2024
(Arising out of SLP(C)No.31314 of 2012)

KISHORCHANDRA CHHANGANLAL RATHOD

... APPELLANT

Versus

UNION OF INDIA AND ORS.

... RESPONDENTS

O R D E R

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 unsusceptible 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 2430 and 2432G 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

1 (2020) 6 SCC 548, para 14.

2 (2021) 8 SCC 401, para 67.

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 others³ A closer examination of the aforementioned case, however, would show that the Court in that case restricted judicial intervention when 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

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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.

.....J.
(SURYA KANT)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JULY 23, 2024.

