

CWP No.7548 of 2023

-1-

2023:PHHC:134750-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7548 of 2023 (O&M)

Reserved on:11.10.2023

Pronounced on:17.10.2023

Rajesh Kumar Sharma and others ... Petitioners

Versus

State of Punjab and others ... Respondents

2. **CWP No.17204 of 2023 (O&M)**

Inderpreet Singh ... Petitioner

Versus

Union of India and others ... Respondents

3. **CWP No.15263 of 2023 (O&M)**

Rajinder Beri and others ... Petitioners

Versus

State of Punjab and others ... Respondents

4. **CWP No.16079 of 2023 (O&M)**

Balwinder Singh Dhaliwal ... Petitioner

Versus

State of Punjab and others ... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. N.K. Verma, Advocate and
Mr. Ankush Verma, Advocate
for the petitioner in CWP No.7548 of 2023.

Mr. G.S. Bhatia, Advocate
for the petitioner in CWP No.17204 of 2023.

Mr. H.P.S. Ishar, Advocate
Mr. Parminder S. Vig, Advocate and
Mr. Amrit Pal Singh Sodhi, Advocate
for the petitioner in CWP No.15263 of 2023.

CWP No.7548 of 2023

-2-

2023:PHHC:134750-DB

Mr. Gourave Bhaiyya Gilhotra, Advocate
 Mr. Akash Manocha, Advocate and
 Mr. Hitesh Verma, Advocate
 for the petitioners in CWP No.16079 of 2023.

Mr. Sanjeev Soni, Addl. A.G., Punjab.
 Mr. D.V. Sharma, Sr. Advocate with
 Mr. Arshdeep, Advocate
 for respondents No.1 to 5 in CWP No.7548 of 2023.
 for respondents No.3 to 6 in CWP No.17204 of 2023.
 for respondents No.1 to 4 in CWP No.15263 of 2023.
 for respondents No.1 to 6 in CWP No.16079 of 2023.

Ms. Sharmila Sharma, Advocate
 for respondents No.1 and 2 in CWP No.17204 of 2023.

HARPREET SINGH BRAR, J.

1. By this common order, four writ petitions, details of which have been given in the head note, are being disposed of, as the issue involved in all the writ petitions is identical. However, facts are being enumerated from CWP No.7548 of 2023 with the consent of all the parties.

1.1. Prayers as culled out from the prayer clause of all writ petitions are as under:-

CWP No.7548 of 2023

- (i) To set aside the process of wardbandi of the wards of Municipal Council-Dera Baba Nanak, District Gurdaspur and draft notification issued in this regard vide notice dated 22.12.2022 (Annexure P-5) as the said process was done without following the due procedure as prescribed under the Municipal Act, 1911 (hereinafter referred to as the Municipal Act) and the

CWP No.7548 of 2023

-3-

2023:PHHC:134750-DB

Delimitation of Wards of Municipalities Rules, 1972 (hereinafter referred to as the Rules of 1972).

- (ii) To direct respondents to withdraw the publication dated 22.12.2022 (Annexure P-5) whereby objections qua fresh delimitation have been sought and to conduct elections as per the figures of delimitation exercise carried out in the year 2021.
- (iii) To restrain the respondents from finalizing the delimitation exercise and conducting elections during the pendency of the present writ petition.

CWP No.17204 of 2023

- (i) To quash notification dated 25.05.2022 (Annexure P-5) issued by respondent No.3 vide which Delimitation Board has been constituted for the purpose of delimitation of wards of Municipal Council, Dharamkot, District Moga, being issued in violation of Rule 3 of the Rules of 1972 and order dated 28.07.2020 (Annexure P-2) issued by respondent No.2 as well as the notification dated 18.08.2020 (Annexure P-3) issued under Rule 8 (iv) of the Census Rules, 1990 by respondent No.3 whereby administrative boundaries of all the wards in the State of Punjab have been frozen w.e.f. 31.12.2020 till the completion of census as per the provisions of the Census Act, 1948.
- (ii) To quash draft Scheme dated 22.12.2022 and public notice dated 23.12.2022 (Annexure P-6) issued by respondents No.3 & 5 respectively on the ground that the process of delimitation as

undertaken by respondent No.6 in pursuance of notification dated 25.05.2022 (Annexure P-5) is in violation of provisions of Rules 3, 4, 6 and 8 of the Rules of 1972 and notification dated 18.08.2020 (Annexure P-3) issued under Rule 8 (iv) of the Census Rules, 1990, which places an embargo on changing the administrative boundaries from 31.12.2020 till the completion of census.

- (iv) To quash notification dated 18.01.2023 (Annexure P-12) whereby Rules/Scheme has been prepared by respondent No.3 for dividing Nagar Council, Dharamkot, District Moga in wards and each ward for fixing of number of members to be elected from each ward as well as notifications dated 19.01.2023 (Annexure P-13) and 18.01.2023 (Annexure P-14).
- (iv) To direct respondents to maintain administrative boundaries of all the wards of respondent No.5-Municipal Council as stood prior to the notification dated 25.05.2022 (Annexure P-5) and comply with the notification dated 18.08.2020 (Annexure P-3) issued under Rule 8 (iv) of the Census Rules, 1990.
- (v) To stay the operation of the impugned notifications dated 25.05.2022 (Annexure P-5), 18.01.2023 (Annexure P-12), 19.01.2023 (Annexure P-13) and 18.01.2023 (Annexure P-14) and further restrain the respondents from taking any action qua delimitation and re-adjustment of wards of respondent No.5-Municipal Council.

CWP No.15263 of 2023

- (i) To quash the illegal appointment of respondents No.5 and 6 as members of the Delimitation Board for Jalandhar Municipal Corporation in blatant violation of Clause 3 (1) (viii) of the Delimitation of Wards of Municipal Corporation Order, 1995 (hereinafter referred to as the 1995 Order).

CWP No.16079 of 2023

- (i) To set aside the letter dated 16.12.2022 (Annexure P-1) qua delimitation of wards of Municipal Corporation, Phagwara under Clause 8 of the 1995 Order and subsequent proceedings arising therefrom as well as the Draft Notification dated 01.06.2023 (Annexure P-2) as the same has been issued in violation of sub-clause 2 of Clause 4 of the 1995 Order.
- (ii) To stay operation of draft notification dated 01.06.2023 of delimitation proposal (Annexure P-2) as well as operation of letter dated 16.12.2022 (Annexure P-1) during the pendency of the present petition and to restrain the respondents from carrying out any further proceedings in pursuance of aforesaid notifications.

FACTUAL BACKGROUND

2. The factual matrix as culled out from CWP No.7548 of 2023 is that the Dera Baba Nanak is a Municipal Council situated in the District Gurdaspur and it holds regular elections for local bodies as per the mandate conferred on it by the 74th amendment of the Constitution of India. In the

year 2020, the respondent-department had issued the draft Notification No.9/14/2018-3CC3/3179 for delimitation/wardbandi of the Municipal Council, Dera Baba Nanak, Gurdaspur as there was increase in the population owing to addition of five villages in the said Council. The respondent-department vide notification dated 31.03.2021 (Annexure P-1) sanctioned the wardbandi and sent the final wardbandi map and details of the reservation criteria for publication in the official Gazette. On the said proposal sent by the respondent-department to the State Government for conducting elections of Municipal Council, Dera Baba Nanak, the Department of Local Bodies issued notification qua holding of municipality elections on 31.05.2021. However, at that time, elections could not be held due to addition of five adjoining villages in the Municipal Council of Baba Dera Nanak.

2.1 Now, the petitioners came to know that respondent-department in order to give undue advantage to the ruling party of the State of Punjab is going to conduct delimitation/wardbandi afresh, despite the fact that the last wardbandi was already done on 31.03.2021, which was duly approved and sent for publication of the final notification in the official Gazette. However, the respondent-department has again issued a draft notification of wardbandi and issued a public notice for inviting objections/suggestions in a completely illegal and arbitrary manner.

2.2 As soon as the aforesaid fact came to the knowledge of the petitioners, applications dated 17.08.2022 and 15.12.2022 (Annexure P-3) were filed by petitioner No.1 under the Right to Information Act, 2005 seeking

information viz; a copy of notification through which five villages were added in the boundaries of Municipal Council, Dera Baba Nanak, starting and end point of the wards, reservation details of wards etc. Information was provided to petitioner No.1 by the respondent-department vide reply dated 26.10.2022 (Annexure P-2) along with copy of notification dated 30.12.2020 (Annexure P-4). On 22.12.2022 (Annexure P-5), a public notice was issued by the Executive Officer, Municipal Council, Dera Baba Nanak whereby objections were sought from the residents of the area within 7 days from the date of publication with regard to conduct fresh wardbandi.

2.3. The petitioners, being residents of the area concerned, sought copy of proposed draft of delimitation from the respondent-department but the same was not supplied to them rather they were told that maps of wardbandi are available with the Municipal Council, which can be looked into by them. The petitioners filed their objections on 30.12.2022 (Annexure P-6) to the respondent-department with regard to publication dated 22.12.2022 pointing out the mistakes in the new draft of wardbandi as well as the fact that it was not drafted as per the provisions of law. It was also mentioned therein that wardbandi of the said area was already done in the year 2021 and a fresh wardbandi is proposed without giving proper information and that a pick and choose policy has been adopted in adding and subtracting the houses in the wards as per the whims and fancies of the respondent-department. The wardbandi ought to have been done strictly according to the map and fresh wardbandi could be done only in the case of increase in the population or alteration in the boundaries. As the wardbandi was done only in the year

2021, there was neither any boundary altered nor population increased to such an extent that fresh wardbandi was required to be done within a period of one year. Despite the said fact, the respondent-department is hell bent in publishing the final notification without deciding the objections raised by the petitioners and in contravention of Rules 3 to 8 of Rules of 1972. Therefore, aggrieved by the said action of the respondents, the petitioners are approaching this Court by way of instant writ petition.

2.4 It is pertinent to mention here that the bone of contention in CWP Nos.17204, 15263 and 16079 of 2023 is the delimitation/wardbandi of wards in the Municipal Council, Dharamkot and Municipal Corporation, Phagwara respectively.

CONTENTIONS ON BEHALF OF THE PETITIONERS

3. Learned counsel appearing for the petitioners in CWP No.7458 of 2023 had, *inter alia*, contended that the delimitation of the wards is provided under Rule 4 (ii). The delimitation can only be done;

- (a) if the municipal limits are altered;
- (b) if there is an increase in the population of the Municipality;
- (c) if there is abnormal variation in population or voting figures of some of the wards of the Municipality.

3.1 The petitioners have provided at page 7 of the writ petition the ward wise details of population in different categories of the earlier delimitation exercise finalized vide notification dated 31.03.2021 (Annexure P-1). Similarly, the ward wise details of population of the impugned delimitation exercise is provided at page 11 of the writ petition. A perusal of figures as

mentioned at page 7 and 11 indicates that total population of the Municipal Council Dera Baba Nanak is 11197 in both the delimitation exercises. Out of the total population of 11197, the population of the Scheduled Castes, Backward Classes and General Class is identical in both exercises i.e. 1994, 4195 and 5008 respectively. Surprisingly, the number of wards remain the same in both the delimitations i.e. 13 wards. As such, the impugned delimitation exercise was done without there being any alteration in municipal limits or increase in population. In the impugned delimitation exercise, the number of voters and number of wards remains the same (13 wards and 11197 population). As such, on this ground alone, the impugned delimitation exercise is liable to be set aside being violative of Rule 4 of the Rules of 1972.

3.2 The respondent-State has not controverted the above stand taken in the writ petition. Intentionally detailed parawise reply was not filed rather only a short reply is filed by respondents No.1 and 2 to mislead this Court to justify the delimitation on the ground that new voters have attained the age of 18 years and therefore, their names are to be included in the electoral rolls and on account of deaths having taken place, re-adjustment of wards was justified. In fact, a perusal of the record indicates that in the impugned delimitation exercise not even a single voter is added to the earlier delimitation. The entire delimitation exercise has been done in complete violation of the procedure prescribed under Rules 3 to 8 of the Rules of 1972. The notification dated 27.01.2023 was issued without de-notifying the previous notification dated 31.03.2021 vide which the delimitation of

the Municipal Council of Dera Baba Nanak was finalized in compliance of Rule 4 of the Rules of 1972 by virtue of which municipal limits of Dera Baba Nanak were altered by adding 5 villages in it. The official respondents have admitted that there was no alteration in the municipal limits to justify the publication of subsequent *de novo* notification qua delimitation of wards of the Municipal Council of Dera Baba Nanak when already previous delimitation vide notification dated 31.03.2021 was in force. As per the subsequent notification, the number of wards is the same i.e. 13 wards, as was the case in the previous delimitation notification. It was further contended that the Delimitation Board was not constituted in compliance of Rule 3 of the Rules of 1972, which mandates that the Delimitation Board shall associate with itself for the purpose of assisting it in its day to day functioning not more than five members of a Municipality having due regard to the representation of various political parties and groups in the composition of the Municipality. It was argued that the Delimitation Board was constituted arbitrarily and completely disturbing the level playing field by depriving the stakeholders belonging to different groups and political parties to take part in decision making process of delimitation of wards, which renders the entire exercise of delimitation as an arbitrary and colourable exercise of power.

3.3 Learned counsel for the petitioners further assailed the delimitation exercise on the ground that the geographical compactness under Rule 6(a), division of each Municipality into wards with same population subject to a variation upto 10%, above or below the average population figures under

Rule 6 (b) and rotation of seats as provided under sub-rules (c), (d) & (e) of Rule 6 of the Rules of 1972 has not been conducted. He further referred to the proviso and explanation attached to Rule 6 *ibid*, which mandates the principle of rotation and the survey of population by going door to door in the Municipality. The Director has not passed any such order under the said Rule for deputing the field staff to conduct door to door survey, which is a vital aspect of the delimitation process for collecting identifiable data for the purpose of reservation. The scheme for delimitation of wards was never sent to the State Government under Rule 7 of the Rules of 1972 and the publication of notification of the draft delimitation scheme inviting objections was also not done in accordance with Rule 8 of the Rules of 1972. It was also argued that the directions issued by this Court in ***Jagmal Vs. State of Haryana and others 2019 (1) PLR 298*** and ***Punjab Pradesh Congress Committee Vs. State of Punjab 2013 (3) RCR (Civil) 1023*** were not followed while finalizing the delimitation process, which has resulted in disturbing the level playing field to give undue advantage to few persons by creating tailor-made wards only suitable to them to ensure their success in elections.

3.4 Learned counsel appearing for the petitioner in CWP No.17204 of 2023, apart from reiterating the contentions raised by the counsel appearing for the petitioner in CWP No.7548 of 2023 had *inter alia*, contended that objections filed under Rule 8 of the Rules of 1972 were decided by respondent No.4-Director, Department of Local Bodies, Punjab and any order passed by respondent No.4 on the objections filed by the petitioner is

of no consequence, as only the State Government is competent to consider all objections and suggestions before passing an order qua delimitation of wards of Municipality under Rule 8 of the Rules of 1972. The meeting of the Delimitation Board, which was held on 19.12.2022, was not attended by the Director, Department of the Local Bodies, Punjab being convener under the Rules of 1972 rather he sent Sh. Balwinder Singh, Clerk as his nominee. The agenda of the meeting, which was to be held on 19.12.2022 was also not circulated and only notice of meeting was given vide letter dated 15.12.2022. The entire delimitation process was finalized on the same day in a solitary meeting held on 19.12.2022 without discussing or supplying the necessary information with regard to the population survey or maps of various wards indicating the compliance of the Rules of 1972.

3.5 Learned counsel for the petitioner further referred to the reply filed by the respondent No.4 to highlight that the entire delimitation exercise is against the mandate of Rule 4 of the Rules of 1972, which provides for delimitation of the wards only if the limits of the Municipality are altered or there is increase in the population of the Municipality. In fact, the reply filed by respondent No.4 indicates that population of the Municipal Council, Dharamkot has reduced from 19057 to 17878 due to migration of residents to foreign countries and deaths that occurred during Covid-19 pandemic. As such, the entire exercise is liable to be set aside.

3.6 Learned counsel appearing for the petitioner in CWP No.16079 of 2023, *inter alia*, submitted that that vide Annexure P-3 dated 20.11.2020, a notification was issued under Clause 8 of the 1995 Order by publishing the

final delimitation of the Municipal Corporation, Phagwara, the Municipal Corporation was divided into 50 wards. No election took place on the basis of the said notification and therefore, impugned delimitation exercise is conducted in violation of Clause 4 of the 1995 Order, as neither there is any alteration in the limits of the city nor there is any increase in the population. The number of wards remained same in the impugned delimitation exercise as well.

3.7 Learned counsel for the petitioner had referred to notification dated 05.09.2023 annexed as Annexure R-1/1 with the reply filed by respondent No.4 to contend that it did not indicate that the said notification was issued in supersession of earlier notification dated 20.11.2020 (Annexure P-3). Without de-notifying the earlier notification or superseding the same, the subsequent delimitation published vide notification dated 05.09.2023 cannot be acted upon, as the earlier notification still has the force of law.

3.8. In additions to the grounds of challenge raised by the counsel appearing for the petitioner(s) in CWP Nos.7548 and 17204 of 2023, he further assailed the impugned delimitation exercise on the ground that no data with regard to geographic status of different classes was collected from each ward and as such, the entire delimitation exercise is beyond the ambit of Clauses 4 to 6 of the 1995 Order. All the parameters provided under Clause 6 of the 1995 Order are completely violated. Thus, the entire delimitation exercise is wholly arbitrary and is an example of colourable exercise of power.

3.9 Learned counsel appearing for the petitioners in CWP No.15263 of 2023 argued that respondents No.5 and 6 therein were appointed as members of the Delimitation Board for Municipal Corporation, Jalandhar in complete violation of Clause 3 (1) (viii) of the 1995 Order, according to which, only one member was to be nominated by the Government by way of notification. Therefore, the Delimitation Board so constituted for delimitation exercise was not even competent to perform the said task.

CONTENTIONS ON BEHALF OF THE RESPONDENTS

4. Per contra, Mr. Sanjeev Soni, Addl. A.G., Punjab and Mr. D.V. Sharma, learned Senior Advocate assisted by Mr. Arshdeep, Advocate appearing for the contesting official respondents had at the very outset raised the objection of maintainability of the instant writ petitions on the ground that the petitioners herein have challenged the election process and therefore, bar expressed under Article 243ZG of the Constitution of India is attracted. In this regard, reliance has been placed upon the notification dated 01.08.2023 issued under Section 13-A of the Municipal Act attached along with the reply to contend that once the notification is issued, the jurisdiction of this Court under Article 226 of the Constitution of India is barred by virtue of provisions of Article 243ZG of the Constitution of India. Similar stand is taken with regard to issuance of notification dated 05.10.2023 under Section 7-A of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as the Act of 1976). The elections of the Municipal Council and Municipal Corporation are scheduled to be held within first fortnight of November, 2023 and therefore, the election process

cannot be interrupted or delayed at the instance of the petitioners herein by entertaining instant writ petitions while invoking the extraordinary jurisdiction of this Court. In support of their arguments, they relied upon the judgments rendered by the Hon'ble Supreme Court and this Court in *Anugrah Narain Singh Vs. State of Uttar Pradesh (1996) 6 SCC 303; Pran Nath Bhatia Vs. State of Punjab 1997 (3) RCR (Civil) 228; Lakhbir Singh Sehme Vs. State of Punjab 2002 (3) RCR (Civil) 52; Gurdev Singh and others Vs. State of Punjab and others 2007 (11) RCR (Civil) 483; Prithvi Raj Vs. State Election Commission, Punjab and others 2007 (3) RCR (Civil) 817; Rinka Puri and others Vs. Union of India and others 2021 (1) PLR 733 and Shiv Kumar Sood and others Vs. Union of India and others 2021 (3) RCR (Civil) 270.*

4.1 On merit, identical stand is taken in all the writ petitions to justify the entire delimitation process by arguing that the process of delimitation of wards is within the four corners of Rule 4 (ii) of the Rules of 1972, as every year there is an increase or decrease of voters in every ward. New voters are to be added in the electoral rolls on their completion of 18 years of age whereas names of dead voters are to be removed from it and thus, readjustment of wards on this basis is imperative. Exact stand taken in Para 5 of the reply filed on behalf of respondents No.1 & 2 in CWP No.7548 of 2023 qua delimitation process is reproduced as under:-

“5. That it is worthwhile to mention herein that the wards within municipal limits can be altered by considering the fact that there is increase/decrease in population. As per Rule 4 (ii) of the Rules,

powers have been vested with the Delimitation Board in respect of readjustment of wards, which is reproduced herein below:-

“Rule 4 (ii) to re-adjust the wards as and when the limits of the Municipality are altered or there is increase in the 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.

It is pertinent to mention herein that the voters in every ward will increase or decrease every year, new voters are added on their completion of 18 years of age. Apart from that every year deaths are also taking place showing decrease in the population. Considering this pattern in every municipal election, the wards are re-adjusted on the basis of data of population. Moreover, the delimitation took place keeping in view the population of the Municipal Council, and as per procedure established by law. The said delimitation cannot be undertaken merely at the behest of some persons and the requisite protocol has to be followed for the finalization of delimitation.”

ANALYSIS AND OBSERVATION

5. We have heard learned counsel for the parties extensively and perused the paper books with their able assistance as well as the record of delimitation process produced by respondent No.2 in all writ petitions.

ISSUE OF MAINTAINABILITY OF WRIT PETITIONS

6. Before advertng to the merits of the case, first of all, the objection raised by the respondents qua maintainability of the writ petitions is required to be adjudicated as to whether issuance of the notifications under Section 13-A of the Punjab Municipal Act, 1911 and Section 7-A of the Punjab Municipal Corporation Act, 1976 creates an absolute bar on

interference by this Court in exercising of its extraordinary jurisdiction under Article 226 of the Constitution of India.

7. Learned counsel(s) appearing for the respondents have vigorously put forth that the non-obstante clause contained in Article 243ZG mandates a judicial hands-off under Articles 226/227 of the Constitution of India and bars this Court from interfering in any manner dealing with delimitation and allocation of seats.

“243ZG. 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 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

8. Firstly, let us examine the judicial precedents vis-a-vis the bar provided under various Articles of the Constitution of India. The High Court as well as the Hon’ble Supreme Court are creatures of the Constitution. This Court was provided extraordinary writ jurisdiction by the Constitution of India in terms of Article 226. There are various Articles in the Constitution where it is specifically provided that the decision of the authority or the institution shall be final and the jurisdiction of the Court is expressly barred.

9. While considering the scope of judicial review during the operation of an order passed by the President under Article 359(1) of the Constitution of India suspending the fundamental right guaranteed under Article 21 of the Constitution of India, a Constitution Bench of the Hon'ble Supreme Court in ***Makhan Singh Tarsikka Vs. State of Punjab AIR 1964 SC 381*** has held that the said order did not preclude the High Court from entertaining a petition under Article 226 of the Constitution where a detenu had been detained in violation of the mandatory provisions of the law governing detention or where the detention has been ordered *mala fide*. It was emphasised that the exercise of a power *mala fide* was wholly outside the scope of the Act conferring the power and can always be successfully challenged.

9.1 Prior to the Constitution (Forty-fourth Amendment) Act, 1978 clause (5) of Article 356 provided that satisfaction of the President of India shall be final and conclusive and shall not be questioned in any court on any ground. Article 356(5) of the Constitution of India reads as under:

“356(5): *Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.”*

A Seven Judge Bench of Hon'ble Supreme Court in ***State of Rajasthan Vs. Union of India (1977) 3 SCC 592*** considered the decision of High Court which in turn was considering the challenge to the validity of a proclamation issued by the President of India under Article 356 of the Constitution. At that relevant time under clause (5) of Article 356, the

satisfaction of the President mentioned in Clause (1) was final and conclusive and it could not be questioned in any court on any ground. All the Hon'ble Judges have expressed the view that the proclamation could be open to challenge if it is vitiated by mala fides.

9.2 As per Article 217(3), decision of the President on the question of age of a judge of a High Court shall be final. Article 217(3) reads as follows:

“217(3): If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.”

While dealing with the decision of the President under Article 217 (3), Hon'ble Supreme Court in ***Union of India Vs Jyoti Prakash Mitter (1971) 1 SCC 396*** held that the President acting under Article 217(3) performs a judicial function of grave importance under the scheme of our Constitution. The President cannot act on the advice of his Ministers. Notwithstanding the declared finality of the order of the President, the Court has the jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral considerations or the principles of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence. But this Court will not sit in appeal over the judgment of the President, nor will the Courts determine the weight which should be attached to the evidence. Appreciation of evidence is entirely left to the President and it is not for the Courts to hold that on the evidence placed before the President on which the

conclusion is founded, if they were called upon to decide the case they would have reached some other conclusion.

9.3 As per Article 311(3) of the Constitution of India, the decision of an authority regarding question of conducting inquiry is final. Article 311(3) reads as:

“311(3). If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

A Constitution Bench of the Hon’ble Supreme Court while dealing with Article 311(3) in *Union of India Vs. Tulsiram Patel (1985) 3 SCC 398* held that ‘finality’ given by clause (3) of Article 311 is not binding upon the Court. The Court will examine the charge of mala fides, if any, made in the writ petition. The Court will consider the situation which according to the disciplinary authority caused it to conclude that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would amount to an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated.

9.4 As per the “Tenth Schedule” of Constitution of India, the decision of Speaker regarding disqualification of member of Parliament or Legislative Assembly is final. Para 6 & 7 of Tenth Schedule read as under:

“6. Decision on questions as to disqualification on ground of defection: (1) *If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:*

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) *All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212.*

7. Bar of jurisdiction of Courts. – *Notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.*

While dealing with scope of judicial review qua decision of speaker under the Tenth Schedule, a Constitution Bench of Supreme Court in ***Kihoto Hollohan Vs. Zachillhu & Others 1992 Supp (2) SCC 651*** speaking through Justice M Venkatachalliah, has held as under:-

“111. In the result, we hold on contentions (E) and (F):

That the Tenth Schedule does not, in providing for an additional grant for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable

constitutional area. The power to resolve such disputes vested in the Speaker or chairman is a judicial power.

That Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution in so far as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned.

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh's Case Spl. Ref. No. 1, (1965) 1 SCR 413, to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the Legislature of a State" confines the scope of the fiction accordingly.

The Speaker/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairman. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia timet actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or

suspensions which may have grave, immediate and irreversible repercussions and consequence.”

9.5 A three Judge Bench of Hon'ble Supreme Court in ***Magadh Sugar & Energy Ltd. Vs. State of Bihar & Ors., 2021 SCC OnLine SC 801***, after considering its earlier judgment in ***Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai (1998) 8 SCC 1, Harbanslal Sahni Vs. Indian Oil Corporation Ltd. (2003) 2 SCC 107 & Radha Krishan Industries Vs. State of Himachal Pradesh 2021 SCC OnLine SC 334***, speaking through the Chief Justice of India, Dr. D.Y. Chandrachud, has concluded that there is no complete bar on entertaining a writ petition in spite of existence of an alternative remedy, however it should be exercised in circumstances as enumerated below:

“25. xxxxxx

- (i) *The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
- (ii) *The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
- (iii) *Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*
- (iv) *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an*

appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

9.6 A two Judge Bench of the Hon’ble Supreme Court in ***Hari Krishna Mandir Trust vs. State of Maharashtra and others (2020) 9 SCC 356*** speaking through Justice Indira Banerjee, has held as under:-

“100. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion mala fide, or on irrelevant consideration.

101. In all such cases, the High Court must issue a Writ of Mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.

102. In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the

government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In Directors of Settlements, Andhra Pradesh and Others v. M.R. Apparao and Anr. (2002) 4 SCC 638. Pattanaik J. observed: (SCC p. 659, para 17)

“17 One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, “Mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (see Kalia Singh v. State of U.P. AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.” (emphasis in original)

9.7 The Hon'ble Supreme Court concluded in the above decision that it is the duty of the Constitution Court to issue a mandamus for enforcement of public duty. There can be no doubt that an important requisite for issuance of mandamus lies in the direction to enforce a legal duty. The duty must be shown to exist towards the petitioners. The only caveat is that the statutory duty must exist before it can be enforced through mandamus unless a statutory duty or right can be read in the provision itself, mandamus cannot be issued to enforce the same.

10. The petitioners before this Court in the instant writ petitions are challenging the delimitation process of the wards on the ground that the State Government, while carrying the delimitation process of the wards, has completely brushed aside the constitutional and statutory provisions. As a general rule, it is not for the Court to indicate in what manner the delimitation of the wards would be done so long as the same is done in conformity with the constitutional and statutory provisions or without committing a breach thereof. However, if the infirmities/illegalities committed by the respondent-State while carrying out the exercise of delimitation of wards are grave and palpably illegal, this Court can interfere under writ jurisdiction especially when the election process is yet to be put into motion by the State Election Commission to hold elections by issuing a schedule of election containing the date of filing nomination papers, voting and result etc.

10.1 A two judge bench of the Hon'ble Supreme Court in *Election Commission of India Vs. Ashok Kumar (2000) 8 SCC 216* speaking through the then Chief Justice of India R.C. Lahoti, has held as under:-

“32....(2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.....”

11. In CWP No.7548 of 2023, the petitioners had approached this Court on 16.02.2023, advance copy of which was supplied to the office of the Advocate General, Punjab. CWP Nos.17204, 15263 and 16079 of 2023 were filed on 24.07.2023, 03.07.2023 and 17.07.2023 respectively, meaning thereby, all the writ petitions were filed much prior to the issuance of notifications dated 01.08.2023 and 05.10.2023 under Section 13-A of the

Municipal Act and Section 7-A of the Act of 1976 respectively for expressing intention of holding the general elections to elect the members of the Municipal Councils/Municipal Corporations/Nagar Panchayats were issued. Therefore, the facts of the present case clearly indicate that the petitioners had approached the respondents through filing representations and this Court well before the issuance of notifications dated 01.08.2023 and 05.10.2023. These notifications were issued during the pendency of the present writ petitions and were attached with the short reply filed by the respondent Nos.1& 2. Merely by efflux of time, the respondents cannot frustrate the legal rights of the petitioners by issuing notifications and then plead the bar under Article 243ZG of the Constitution of India. The respondent No.1, who issued the above notification, is overall incharge of the Department of Local Bodies, Punjab and is also responsible for conducting delimitation exercise as provided under the Rules of 1972.

11.1 A two Judge Bench of the Hon'ble Supreme Court in *Union Territory of Ladakh and others Vs. Jammu and Kashmir National Conference and another, Civil Appeal No.5707 of 2023 decided on 06.09.2023*, speaking through Justice Ahsanuddin Amanullah, while setting aside the election process initiated pursuant to the notification issued by the Administration of Union Territory of Ladakh for holding elections to the local bodies of Union Territory of Ladakh, has held as under:-

“36. We are conscious that, by way of certain pronouncements, some of which are alluded to in this judgment, the Court extended principles relating to elections to Parliament, State Assemblies and Municipalities to other arenas as well. Indicatively, the interpretation

*of judgments is always to be made with due regard to the facts and circumstances of the peculiar case concerned. We have looked at Articles 243-O, 243ZG and 329 of the Constitution, and conclude that no bar hit the High Court, even on principle. Apart from the judgments expressly considered and dealt with, hereinbefore and hereinafter, we have perused, out of our own volition, the decisions, inter alia, of varying Bench-strength of this Court in ***N.P.Ponnuswami v Returning Officer, Namakkal Constituency, 1952 SCR 2187; Durga Shankar Mehta v Thakur Raghuraj Singh, (1955) 1 SCR 267; Hari Vishnu Kamath v Syed Ahmad Ishaque, (1955) 1 SCR 1104; Narayan Bhaskar Khare(Dr) v Election Commission of India, 1957 SCR 1081; Mohinder Singh Gill v Chief Election Commissioner, (1978) 1 SCC 405; Lakshmi Charan Sen v A K M Hassan Uzzaman, (1985) 4 SCC 689; Indrajit Barua v Election Commission of India, (1985) 4 SCC 722; Election Commission of India v Shivaji, (1988) 1 SCC 277; Digvijay Mote v Union of India, (1993) 4 SCC 1758; Boddula Krishnaiah v State Election Commissioner, Andhra Pradesh, (1996) 3 SCC 416; Anugrah Narain Singh v State of Uttar Pradesh, (1996) 6 SCC 303; Election Commission of India v Ashok Kumar, (2000) 8 SCC 216; Kishansing Tomar v Municipal Corporation, Ahmedabad, (2006) 8 SCC 352; West Bengal State Election Commission v Communist Party of India (Marxist), (2018) 18 SCC 141; Dravida MunnetraKazhagam v State of Tamil Nadu, (2020) 6 SCC 548; Laxmibai v Collector, (2020) 12 SCC 186, and last but not the least, State of Goa v Fouziya Imtiaz Shaikh, (2021) 8 SCC 4019.* On scrutiny, in combination with the timelines and facts of the matter herein, we are sure that the High Court did not falter.***

37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts,

under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power per se of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order.

38. *The reasoning of the learned Single Judge, further expounded by the learned Division Bench, leaves no doubt that the relief sought by R1 was required to be granted and, accordingly, the same was granted by the High Court. The stark factor which stares us in the face is that well before and well in time, by way of the writ petition, R1 had approached the Court of first instance (the learned Single Judge), for the reliefs, which have been found due to them ultimately, and upheld by the Appellate Court (the learned Division Bench). It is the Appellants, who by virtue of sheer non-compliance of the High Court's orders, be it noted, without any stay, can alone be labelled responsible for the present imbroglio. These stark facts cannot be broadly equated with other hypothetical scenarios, wherein the facts may warrant a completely hands-off approach.*

39. *This case constrains the Court to take note of the broader aspect of the lurking danger of authorities concerned using their*

powers relating to elections arbitrarily and thereafter, being complacent, rather over-confident, that the Courts would not interfere. The misconceived notion being that in the ultimate eventuate, after elections are over, when such decisions/actions are challenged, by sheer passage of time, irreversible consequences would have occurred, and no substantive relief could be fashioned is just that – misconceived. However, conduct by authorities as exhibited herein may seriously compel the Court to have a comprehensive re-think, as to whether the self-imposed restrictions may need a more liberal interpretation, to ensure that justice is not only done but also seen to be done, and done in time to nip in the bud any attempted misadventure. We refrain from further comment on the Appellants, noting the pendency of the contempt proceeding.” (emphasis supplied).

11.2 While setting aside the earlier notification for holding election, the Hon’ble Supreme Court issued following directions to the respondent-Union Territory:-

“44. For reasons aforesaid, the entire election process, initiated pursuant to Notification dated 02.08.2023 issued by the Administration of Union Territory of Ladakh, Election Department, UT Secretariat, Ladakh, under S.O.53 published vide No.Secy/Election/2023/290-301 dated 05.08.2023 stands set aside. A fresh Notification shall be issued within seven days from today for elections to constitute the 5th Ladakh Autonomous Hill Development Council, Kargil. R1 is declared entitled to the exclusive allotment of the Plough symbol for candidates proposed to be put up by it.”

12. Reference is also made to another judicial precedent rendered by a two Judge Bench of Hon’ble Supreme Court of India on the issue, which is also relied upon by the counsel appearing for the respondents in **Anugrah**

Narain Singh's case (supra) in the context of the time line of the facts of the present case. Speaking through Justice Suhas C. Sen, in paragraph 12 of the judgment, the Hon'ble Supreme Court observed that validity of laws relating to delimitation and allotment of seats made under Article 243ZA of the Constitution of India cannot be questioned before any Court and if the election is imminent or well underway, the Court should not intervene the said election process. The facts in *Anugrah Narain Singh's case* (supra) would show that the judicial intervention was sought when the last date for withdrawal of the nomination papers was over and in this context, the Hon'ble Supreme Court has held as under:-

“7. Another important feature of this case, which was ignored by the High Court, was that the process of reservations for various wards and delimitation of constituencies had been completed before June 1995. There was ample opportunity under the Act to raise objections before finalisation of the delimitation process. Section 32 of the Uttar Pradesh Municipal Corporation Adhiniyam, 1959 (hereinafter referred to as "the U.P. Act") has empowered the State Government to divide the municipal areas into wards on the basis of the population and determine the number of wards into which the municipal area should be divided. The State Government may also determine the number of seats to be reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes and women. The State Government is required to issue an order for this purpose which has to be published in the Official Gazette for objections for a period of not less than seven days. After considering the objections that may be filed, the draft order may be amended, altered or modified. Whatever the State Government does, after considering the objections, will be the final order. That process has been gone through. If it is the case of the writ

petitioners that they filed objections to the draft orders and their objections were overruled arbitrarily, they should have challenged it forthwith. In fact the notifications of reservation of various wards and delimitation of constituencies had been completed before June 1995. After all these things became final, the writ petitioners waited till 26-10-1995 to file this writ petition when the last date for withdrawal of nomination papers was over. This writ petition should have been dismissed on the ground of laches only. At a time when the election process was in full swing, huge expenditures had been incurred by the candidates, the political parties and also the Government for this purpose, some of the candidates had already been declared elected unopposed, the Court decided to intervene and stop the elections.

12.1 A perusal of the aforesaid observations of the Hon'ble Supreme Court in **Anugrah Narain Singh (supra)** indicates that the petitioners therein had agitated the reservation of wards in pursuance to the delimitation process when the last date for withdrawal of nomination papers was over. In the present case, the petitioners had not been indolent and they had filed the present writ petitions way before the issuance of notifications under Section 13-A of the Municipal Act, and Section 7-A of the Act of 1976 on 01.08.2023 and 05.10.2023 respectively.

13. The sequence and events of the case would indicate that the petitioners have approached the concerned quarters by way of representations well in time and also approached this Court by filing the present writ petition much before the issuance of notifications dated 01.08.2023 and 05.10.2023 and thus, the respondents cannot take the shelter of technicalities and plead the bar under Article 243ZG of the Constitution

of India by issuing the notification of finalizing delimitation on 01.08.2023 and 05.10.2023 during the pendency of writ petitions. The issues raised by the petitioners cannot be frustrated by efflux of time. The Hon'ble Supreme Court in ***Union Territory of Ladakh (supra)*** has held as under:-

*“32. The Court would categorically emphasize that no litigant should have even an iota of doubt or an impression (rather, a misimpression) that just because of systemic delay or the matter not being taken up by the Courts resulting in efflux of time the cause would be defeated, and the Court would be rendered helpless to ensure justice to the party concerned. It would not be out of place to mention that this Court can even turn the clock back, if the situation warrants such dire measures. The powers of this Court, if need be, to even restore status quo ante are not in the realm of any doubt. The relief(s) granted in the lead opinion by Hon. Khehar, J. (as the learned Chief Justice then was), concurred with by the other 4 learned Judges, in ***Nabam Rebia and Bamang Felix v Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1*** is enough on this aspect. (emphasis supplied).*

14. The Full Bench decision in ***Prithivi Raj*** (supra) has its own persuasive value but in the facts and circumstance of this case, we respectfully borrow the opinion of the Hon'ble Supreme Court in ***Union Territory of Ladakh (supra)***, ***Ashok Kumar (supra)*** and ***State of Goa Vs. Fouziya Imtiaz Shaikh (2021) 8 SCC 401***. In view of the above discussion, we hold that the present petitions are maintainable.

ANALYSIS ON MERIT AND OBSERVATIONS

15. The challenge in the present writ petition is to the delimitation process on the ground of colourable exercise of power and arbitrariness by the

authorities as the mandate of Rule 4 of the Rules of 1972 is completely throttled in the impugned delimitation exercise. Neither there is any alteration in the municipal limits nor there is any increase in the population. As such, the entire exercise is a nullity and suffers from incurable defect. The respondents have completely departed from the procedure prescribed under the Rules of 1972 by creating tailor-made wards only suitable to a few to ensure their success in elections, which has resulted in disturbing the level playing field to give undue advantage to a select few. The petitioners in CWP No.7548 of 2023 have taken a specific stand by referring to ward-wise statement of Municipal Council-Dera Baba Nanak published in pursuance to wardbandi done vide notification dated 31.03.2021 and the ward-wise statement of draft notification dated 22.12.2022 on page 7 & 11 of the writ petition, which are reproduced as under:-

Ward wise statement MC Dera Baba Nanak vide Notification 31.03.2021					
Ward No.	TP	SC	BC	Gen	Reservation
1	794	77	446	271	R/W
2	802	47	420	335	General
3	928	265	213	450	R/W
4	815	272	163	380	R/SC/W
5	783	72	149	562	R/W
6	818	229	229	360	General
7	893	221	543	129	R/BC
8	824	129	333	362	General
9	943	132	406	405	R/W
10	917	453	171	293	R/SC
11	896	57	413	426	R/W
12	914	27	329	558	General
13	870	13	380	477	General
Total	11197	1994	4195	5008	

Ward wise statement MC Dera Baba Nanak – Draft Notification 22.12.2022					
Ward No.	TP	SC	BC	Gen	Reservation
1	812	30	456	326	R/W
2	781	93	339	349	
3	859	200	278	381	R/W
4	940	289	350	301	R/SC
5	928	265	213	450	R/W
6	824	287	417	120	
7	800	129	296	375	R/W
8	930	132	406	392	
9	864	327	176	361	R/SC/W
10	783	72	149	562	
11	888	65	479	344	R/BC
12	901	100	266	535	
13	887	5	370	512	R/W
Total	11197	1994	4195	5008	

15.1 A comparison of both the ward wise statements of Municipal Council-Dera Baba Nanak makes it abundantly clear that there is no increase in the population rather the total population in both the statements is mentioned as 11197. Not only this, figures of category wise population i.e. SC, BC and General are also identical and there is not even a single digit variation. This contention was not even controverted in the reply by respondents No.1 and 2 rather a short reply was filed by respondents No.1, 3 & 4 to mislead this Court and projected a ground that impugned delimitation process was necessitated on account of addition of new voters on attaining the age of 18 years and deletion of dead voters. We find force in the arguments of the learned counsel for the petitioners that the respondents have intentionally avoided filing of detailed parawise reply on merits. The above approach of the respondents needs to be deprecated. On this ground alone, the subsequent impugned delimitation exercise is liable to be set aside, which

was finalized vide notification dated 27.01.2023. The petitioners had specifically pleaded in paragraph 3 that they had moved an RTI application (Annexure P-7) seeking the copy of the notification of the fresh impugned delimitation but the same has not been provided to the petitioners. This fact was not denied by the respondents in their reply and no objection was raised whatsoever on the ground that specific challenge to the notification dated 27.01.2023 finalizing the subsequent delimitation was not made. The entire stand of the petitioners in the writ petition remains uncontroverted as the respondents No.1 to 5 have not filed detailed parawise reply by specifically denying the stand taken by the petitioners in the writ petition. Only a short reply was filed on behalf of respondents No.1 and 2. Even no attempt was made to controvert the stand of the petitioners during arguments.

16. Let us examine the statutory provisions of the Rules of 1972.

“3. Constitution of Board :- (1) *For the purposes of carrying out the provisions of these rules, the Government shall constitute a Delimitation Board for each Municipality consisting of the following members namely:-*

(i) The Deputy Commissioner of the District in which the Municipal Council/Nagar Panchayat is situated or any other officer nominated by him in this behalf;

(i) (a) Member of the Punjab Legislative Assembly representing the concerned Municipality.

(ii) Sub-Divisional Officer;

(iii) The Deputy Director, Local Government of the Region concerned;

(iv) The President or Administrator of the Municipal Council or Nagar Panchayat concerned; and

(v) *Executive Officer of the Municipal Council or Nagar Panchayat concerned.*

(vi) *Two members nominated by the Government by notification.*

(2) The Board shall associate with itself for the purpose of assisting it in its day to day functioning not more than five members of the Municipality having due regard to the representation of various political parties and groups in the composition of the Municipality. The names of associate members shall be sponsored to the Director by the Executive Officer of the concerned Municipality in consultation with the concerned Deputy Commissioner. This provision shall not, however, apply in the case of a dissolved Municipality.

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 Municipality, and the number of seats reserved for members of the Scheduled Cases, Backward Classes and women.

(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.

5. Procedure and Powers of the Board :- *(1) None of the associate members shall have a right to vote or to sign any decision of the Board.*

(2) The meetings of the Board shall be convened by the Director, after giving notice of at least three days of the date, time and place of the meeting to all of its members.

(3) The quorum necessary for the transaction of business at a meeting of the Board shall be four.

(4) All questions which come before any meeting of the Board shall be decided by a majority of the votes of the member present and voting. The Chairman of the meeting, in case of an equality of votes, shall have a second or casting vote.

(5) The Board shall have power to act notwithstanding the temporary absence of a member, or an associate member, or of the existence of a vacancy in the Board, and no act or proceeding of the Board shall be invalid or called in question on the ground merely of temporary absence of a member or associate members, or of the existence of such a vacancy.

(6) The Sub-Divisional Officer shall be Chairman of the Board. In his absence, the members present shall elect one who shall preside over the meeting as Chairman.

6. Principles for Delimitation of Wards of Municipality :- *The following principles shall be observed by the Board in the delimitation of wards of a Municipality, namely: -*

(a) 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 administrative units, if any, facilities of communication and public convenience;

(b) 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 ten per cent, above or below the average population figures;

(c) 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 such seats shall be allocated by rotation to different wards in the Municipality.

(d) Seat numbers reserved for women (including number of seats reserved for women, if any, belonging to Scheduled Castes) by

Government, shall be kept reserved for women and such seats shall be allotted by rotation to different wards in the Municipality; and

(e) One seat reserved for Backward Classes by Government, shall be kept reserved for Backward Classes which shall be located where their population in the Municipality is the largest and such seat shall be allotted by rotation to different wards in the Municipality.

(f) In every Municipality, the Delimitation Board, while drafting the scheme for Delimitation of Wards, shall allot number to all wards having due regard to the principle of constitution.

Provided that principle of rotation shall not be applicable where delimitation of wards of a Municipality has been done under the provisions of clause (ii) of Rule of the rules.

Explanation - In this rule, the expression "population" means the population as ascertained locally through the staff deputed by the Director, by going from door to door in the Municipality.

7. Scheme for delimitation of wards to be sent to State Government:-

The Board shall, as soon as maybe after it has prepared the scheme for the delimitation of wards of the Municipality, send the same to the State Government for consideration.

8. Publication of scheme for delimitation of wards:- The State Government shall: -

(a) publish in the official gazette the scheme for the delimitation of wards received by it under Rule 7 for eliciting objections or suggestions from the affected persons of the Municipality;

(b) specify a date on or after which the scheme alongwith objections and suggestions, if any, will be considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified; and

(d) thereafter, by order determine the delimitation of wards of the Municipality.



TOTAL NON-COMPLIANCE OF RULE 3 (2) OF THE RULES OF 1972

17. The official respondents have taken a somewhat similar stand in all the writ petitions in order to justify the constitution of Delimitation Board constituted on 25.05.2022 under Rule 3 of the Rules of 1972 and two members nominated by the Government vide notification dated 23.05.2022 were also included in the Delimitation Board whereas no associate member was included in complete violation of Rule 3 (2) of the Rules of 1972.

17.1 The above provision is made by the Legislature in its wisdom to maintain the level-playing field and also to provide all stakeholders an active participation in the process of delimitation, much less, rule out any chance of foul play and arbitrariness. In rebuttal, the learned State counsel contended that these provisions do not apply to the dissolved Municipalities. The Municipalities in question have completed their terms and as such, it has to be considered in the species of dissolved Municipality. Article 243U of the Constitution of India provides that every Municipality unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer, provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution. Proviso attached to Article 243U (3) provides that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such

period. Section 14 of the Punjab Municipal Act, 1911 provides for dissolution of Municipality, which is reproduced as under:-

“14. Dissolution of Municipalities. (1) *If in the opinion of the State Government, a Municipality is not competent to perform its duties or persistently makes default in the performance of duties imposed on it by or under this Act or any other law for the time being in force, or exceeds or abuses any of its powers, the State Government may, by an order publish, alongwith reasons thereof, in the Official Gazette, dissolve such Municipality:*

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) *When a Municipality is dissolved under sub-section (1),-*

(i) *all members of the Municipality shall vacate their offices forthwith;*

(ii) *all powers and duties of the Municipality during its dissolution shall be exercised and performed by such person or authority, as the State Government may, by notification, appoint in this behalf; and*

(iii) *all property in possession of the Municipality shall be held by the State Government.*

(3) *Upon dissolution of a Municipality under sub-section (1) the State Government shall re-constitute a Municipality as specified under section 12 and election to reconstitute such Municipality shall be completed before the expiration of a period of six months from the date of dissolution:*

Provided that where the remainder of the period for which dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this sub-section for reconstituting the Municipality for such period.

(4) *The Municipality reconstituted upon the dissolution of the existing Municipality before the expiration of its duration, shall*

continue only for the remainder of the period for which the dissolved Municipality would have continued under section 13 had it not been so dissolved.

17.2 A perusal of the constitutional as well as statutory provisions providing for duration and dissolution of the Municipality clearly indicates that the argument raised by the learned counsel for the official respondents is required to be rejected forthwith, as the Municipality, which has completed its term, cannot be in any manner called a dissolved Municipality. As such, the constitution of Delimitation Board itself suffers from an incurable illegality and would amount to erosion of fair play and level playing field.

NON-COMPLIANCE OF RULE 4 OF THE RULES OF 1972

18. The delimitation of the wards is provided under Rule 4 (ii). The delimitation can only be done;

- (a) if the municipal limits are altered;
- (b) if there is an increase in the population of the Municipality;
- (c) if there is an abnormal variation of population or voting figures in some of the wards, which require such re-adjustment.

Admittedly, there is no alteration in the Municipal limits and perusal of the record indicates that there is no increase in the population in the subsequent impugned delimitation. The number of wards as well as the total population remains the same, as discussed in detail in preceding paragraph No.15. Thus, the non-compliance of the Rule 4 is writ large. Moreover, the perusal of letter No.5065 dated 20.12.2022 sent by

respondent No.4 for forwarding the delimitation scheme through e-mail indicates that the entire delimitation exercise was conducted by the field staff and concerned Executive Officer. The delimitation and re-adjustment of wards is the sole responsibility of the Delimitation Board. As such, the impugned delimitation was not undertaken by the competent authority. Neither the drafts scheme was prepared by the Board nor any other exercise was undertaken by the Board for re-adjustment of the wards as provided under the Rules of 1972. The non-compliance of the Rule 4 of the Rules of 1972 is apparent on record.

NON-COMPLIANCE OF RULE 5 OF THE RULES OF 1972

19. The powers of the Board and the principles for delimitation of wards of Municipality are provided under Rules 5 & 6 of the Rules of 1972. The notice of meeting under Rule 5 (2) was issued on 15.12.2022 fixing the date for the Board to meet on 20.12.2022 at 3.00 PM. A perusal of the record shows that in paragraph 3 of the notice, it was indicated that proposal of delimitation is to be placed before the Delimitation Board on the basis of Census of 2011. On 20.12.2022, meeting of the Delimitation Board was convened in the office of Sub Divisional Officer, Batala and the following decision was taken:-

“The meeting of the Delimitation Board is conducted on 20.12.2022 at 3.00 PM in the office of the Sub Divisional Officer for the purpose of discussion and approval of the draft notification for the delimitation scheme and to invite objection from the public. The draft scheme and the proposed map were approved by the majority of the

members in the meeting of the Delimitation Board and after approval of the majority of the members, the boundaries of the wards along with original maps and description of boundaries of the along with photocopy of the ward-wise statements are being sent to you for further action.”

19.1 On the same day vide letter No.5065 dated 20.12.2022 through e-mail the delimitation scheme was forwarded for publication of the draft by respondent No.3 under Rule 7 before finalizing it under Rule 9 of the Rules of 1972 and for publication of the notice seeking objections in the newspapers. The above letter indicates that the entire delimitation exercise was conducted by the field staff and the concerned Executive Officer, who was also a member of the Delimitation Board. By preparing the data of population of Scheduled Castes and Backward Classes, the task of preparation of maps was also undertaken for the purpose of dividing wards. A perusal of the record produced by the representative of the respondent No.2 indicates that the delimitation was not done by the Delimitation Board as provided under Rule 4 of the Rules of 1972. It is the function of the Board to divide the Municipality into such wards as may be necessary having regard to the number of elected members as determined by the State Government for the Municipality. The entire delimitation process was initiated on 20.12.2022 and in a solitary meeting, the same was approved. The manner in which the delimitation was carried out is completely in derogation of the prescribed procedure provided under Rules 4, 5 and 6. Neither any agenda of the meeting was circulated nor any minutes of the

meeting prepared, which would indicate no application of mind or adherence to the procedure prescribed under Rules 4 to 6 of the Rules of 1972. It is not discernible from the record as to how the maps of the wards were prepared and in which manner the identified data elucidating the population proportion of various communities for the purpose of reservation was collected. The draft scheme for delimitation was not prepared by the Board. It is the sole function of the Board under Rule 4 to re-adjust the wards in terms of the principles enshrined in Rule 6 of the Rules of 1972. The Board has approved the draft scheme in a most mechanical and enigmatic manner. The decision-making process is most cryptic, laconic and the entire delimitation process is conducted in a manner totally alien to the procedure prescribed in the delimitation Rules, as such, the entire process suffers from incurable illegality.

NON-COMPLIANCE OF RULE 6 OF THE RULES OF 1972

20. The principles for delimitation of wards of Municipality are provided under Rule 6 of the Rules of 1972. There is nothing on record to show if the principle of geographical compactness was followed. Rule 6 (a) mandates that due regard shall be given to the physical features, existing boundaries of administrative units, facilities of communication and public convenience. Rule 6 (b) provides that each municipality shall be divided in wards and population of each ward as far as practicable remains the same throughout the Municipality with variation allowed upto 10% at the most but there is a variation of more than 20% as the population of each ward varies from 781 to 940. There is nothing on record suggestive of adherence

to the principle of rotation for reservation of wards for Scheduled Castes, Backward Classes and Women as provided under Rule 6 (c), (d) & (e). The explanation attached to Rule 6 provides for the ascertainment of the population through the staff deputed by the Director by going from door to door in a Municipality. The reply filed by the respondents No.2 & 4 indicates that no such order for deputing the field staff was passed by respondent No.2, rather the field staff was deputed vide office order No.240 dated 16.06.2022 by respondent No.5. A perusal of the record produced by the official of respondent No.2 does not show that any such survey was conducted by visiting door to door. The entire survey of population in all 13 wards is reduced on single page without having the name and particular of even a single house. The one page survey was prepared by just one official and counter-signed on checking by another official. The survey of population is central to reserving the wards for the Scheduled Castes and Backward Classes as provided under Rule 6 (c) & (e). The record provided by the representative of respondent No.2 does not indicate the compliance of even a single principle provided under Rule 6 and substantial compliance is a far cry.

NON-COMPLIANCE OF RULE 7 & 8 OF THE RULES OF 1972

21. The scheme for delimitation of wards after its preparation is to be sent to the State Government by the Board for its consideration but no such process was adopted. The reply filed by respondents No.1 and 2 revealed that the Board has not sent the Scheme for the consideration of the State Government under Rule 7 rather it was forwarded by respondent No.5 on

20.12.2022 vide letter No.5065. As such, there is a violation of the procedure prescribed under Rule 7.

21.1 Further action oriented public notice was not issued under Rule 8 to give adequate opportunity to the inhabitants of the Municipality to file their objections. Only 7 days time was given for filing objections. Rule 8 of the 1972 Rules provides for publication of the draft notification in the Official Gazette for inviting objections from the general public. This Court in **Jagmal Singh (supra)** has issued detailed guidelines for the purpose of delimitation, which are as under:-

“While parting, we would also like to add a few words in regard to the delimitation of wards and thus we are directing the respondents that i) the exercise of delimitation of wards for the purpose of election of the Municipal Committees, Council and Corporations shall be undertaken with wide publicity in the electronic and print media well before the exercise is started, ii) the notification of the proposed warbandi or its substance should not only be allowed to be pasted/affixed in terms of the provisions of the statute but should also be accompanied by a coloured site plan showing formation of separate wards so that the appropriate opportunity could be availed of by the voters for the purpose of filing objections, iii) the competent authority who has to decide the objections, shall decide the objections by passing a well reasoned order reflecting his/her application of mind.”

21.2. None of these guidelines were followed by providing proper notice. Thus, the impugned notifications as well as the impugned public notice were issued in breach of these Rules and *per se* are bad in law and as such, are liable to be quashed as laid down by the Division Bench of this Court in

Sewa Singh vs. State of Punjab 2001 (3) RCR (Civil) 292. Further, the Hon'ble Supreme Court in *Revinder Kumar Vs. State of Punjab 1995 (Sup1) SCC 594* has held that the first requirement under the provision is publication in the official Gazette and secondly its publication in the local area in the manner as may be determined by the Government. The manner in which the objections are invited from the public is provided under Rule 12 of the Punjab Municipal General Rules, 1979, which is reproduced as under:-

“12. Publication of notices :- (1) *In every case in which a notice is to be given by the committee in exercise of the powers conferred or in discharge of an obligation imposed by the Act or by any rule or bye-law made there under such notice shall be published in Form-2, duly filled in, in the following manner for the purpose of inviting objections and suggestions from the public, namely:-*

(a) *Such notice shall be published by proclamation.*

(b) *A copy of such notice together with the copy of the matter to be published shall be affixed at some conspicuous place accessible to the public at the place of meeting of the committee for a period of not less than thirty days.*

(c) *The notice shall be placed on the notice boards set up for this purpose within the limits of the municipality.*

(d) *A copy of such notice alone, with a copy of the matter to be published shall be sent to the editor of the newspaper having wide circulation in the locality, to be selected by the committee for the purpose. The editors of the newspapers so selected shall be addressed as in Form 3.*

Provided that in case of a town planning scheme, the said notice shall be published weekly for two consecutive weeks in two daily

newspapers with a statement of the period within which objection may be received.

(e) Every notice shall specify a date which shall not be less than thirty days from the date of its publication by which objections or suggestions by the persons interested should be submitted to the Secretary or Executive Officer, as the case may be, of the committee.

xxxx

xxxxx”

21.3. The notice issued under Rule 8 does not indicate that it contains any information with regard to boundaries or particulars of command area of any ward nor it was indicated that details of population survey would be provided for the scrutiny of the general public. Only the maps of the proposed area of the wards were to be made available as per the public notice. Further, only 7 days’ time was provided for inviting objections whereas Rule 12 of the Punjab Municipal General Rules, 1979 provides for at least 30 days’ notice for inviting objections or suggestions. The Division Bench of this Court in ***Harjinder Singh Vs. State of Punjab 2002 (1) RCR (Civil) 610*** has laid down the ratio that *“in our opinion, the proposition laid down in the above noted decision deserves to be applied to this case because no action oriented notice and opportunity of hearing was given to the Nagar Panchayat, its members and the persons likely to be affected adversely by denotification of the Nagar Panchayat.”*

21.4 Therefore, in the light of the above provisions, the re-adjustment of wards can only be done in case of alteration of municipal limits or in pursuance to census. As such, in respect of Municipal Council-Dera Baba Nanak, the earlier delimitation was already finalized and notification to this

effect was issued under Rule 8 of the Rules of 1972 on 31.03.2021 (Annexure P-1). The above delimitation was justified on the ground that the municipal limits were altered and 5 new villages were added into the area of the Municipal Council-Dera Baba Nanak. In the above delimitation process, there were 13 wards and in the impugned delimitation exercise, which culminated into the notification issued under Rule 8 of the Rules of 1972 on 27.01.2023, the number of wards remains the same. Similarly, in CWP No.16079 of 2023 which pertains to Municipal Corporation, Phagwara, the delimitation process was already finalized and notification in this regard was issued on 20.11.2020. The Municipal Corporation was divided into 50 wards and without there being any of the eventualities provided under Rule 4 of the Rules of 1972 i.e. alteration of the municipal limits or increase in the population, the impugned delimitation exercise was conducted without holding the elections. The final notification dated 05.09.2023 is made available with the reply as Annexure R-1/1 in CWP No.16079 of 2023 and surprisingly, the number of wards mentioned therein are also 50. The reply filed in CWP No.17204 of 2023 indicates that that there is no alteration in municipal limits rather the population of Municipal Council-Dharamkot has decreased. The impugned delimitation exercise was done on irrelevant consideration by committing blatant breach of Rule 4 of the Rules of 1972. As such, there was no occasion for carrying out fresh delimitation especially when the delimitation of the wards was recently completed upon which no election had taken place with respect to local bodies. Therefore, we hold that repeated delimitation process without any

justifiable cause cannot be done in a routine manner as it is not a discretionary administrative exercise. Repeated exercise of delimitation of wards disturbs geographical compactness and the entire rural/urban population, as the case may be, is put to great hardship and inconvenience. The last delimitation was done in the year 2021 and another delimitation within a year has put the entire population to inconvenience once again as all the inhabitants were forced to get their particulars changed in their Aadhaar Cards, Voter Cards, Passports and other public documents.

WHETHER DELIMITATION CAN BE DONE ON ACCOUNT OF DELETION OF DEAD VOTERS AND ADDITION OF NEW VOTERS ON ATTAINING THE AGE OF 18 YEARS?

22. The stand taken by the respondents No.1 and 2 in their reply is required to be adjudicated in the light of the statutory provisions. The entire delimitation exercise is sought to be justified on the ground that some of the voters have died and their names are required to be excluded from the electoral rolls whereas names of new voters, who have attained the age of 18 years need to be included.

22.1 Chapter VI of the Punjab State Election Commission Act, 1994 deals with electoral rolls for constituencies. Section 2 (r) of the said Act defines the qualifying date in relation to the preparation or revision of every electoral roll as the first day of January of the year in which it is so prepared or revised. The provisions qua electoral rolls as provided under the Punjab State Election Commission Act, 1994, which are relevant for adjudication of the controversy at hand, are reproduced as under:-

“24. Electoral Rolls for every constituency - For every Panchayat and Municipality there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act, under the superintendence, direction and control of the Election Commission.

28. Conditions of registration. - *Subject to the foregoing provisions of this Chapter, every person who, -*

(a) is not less than eighteen years of age on the qualifying date; and

(b) is ordinarily resident in a constituency; shall be entitled to be registered in the electoral roll for that constituency.

30. Preparation and revision of electoral rolls.-- *(1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.*

(2) The electoral roll for each constituency,--

(a) shall unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date—

(i) before each general election to a Panchayat or a Municipality; and

(ii) before each bye-election to fill a casual vacancy in a Panchayat or a Municipality; and

(b) may be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the electoral roll shall not be affected.

(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded in writing, direct for special revision of the electoral roll for any constituency or part of a constituency in such manner, as it may think fit:

Provided that subject to the provisions of this Act, the electoral roll for the constituency as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

22.2 Rules 22 and 26 of the Punjab Municipal Election Rules, 1994 take care of the deletion of names of existing voters and revision of rolls and such exercise in any manner cannot provide an occasion for re-adjustment of wards. Rules 22 and 26 of the said Rules are reproduced as under:-

“22. Deletion of names.- If it appears to the Registration Officer at any time before the final publication of the Roll that owing to inadvertence or error of otherwise, the names of dead persons or of persons who have ceased to be or are not, ordinarily resident in the constituency or of persons who are otherwise not entitled to be registered, that Roll, have been included in the Roll and that remedial action should be taken under this rule, the Registration Officer, shall;

(a) prepare a list of the names and other details of such electors ;

(b) exhibit on the notice- board of his office, a copy of the list together with a notice as to the time and place at which the question of deletion of these names from the Roll will be considered, and also publish the list and the notice in such other manner as he may think fit; and

(c) after considering any verbal or written objections that may be preferred, decide whether all or any of the names should be deleted from the Roll ;

Provided that before taking any action under this rule in respect of any person on the ground that he has ceased to be, or is not, ordinarily resident in the constituency, or is otherwise not entitled to be registered in that Roll, the Registration Officer shall make every endeavour to give him a reasonable opportunity to show cause why the action proposed should not be taken in relation to him.

26. Revision of Rolls.- (1) *The Roll for every constituency shall be revised under sub-section (2) of section 30 either intensively or summarily or partly intensively and partly summarily, as Commission may direct.*

(2) *Where the Roll or any part thereof is to be revised intensively in any year, it shall be prepared afresh and rules 4 to 24 shall apply in relation to such revision as they apply in relation to the first preparation of a Roll.*

(3) *When the Roll or any part thereof is to be revised summarily in any year, the Registration Officer shall cause to be prepared a list of amendments to the relevant parts of the roll on the basis of such information as may be readily available and publish the Roll together with the list of amendments in draft; and the provisions of rules 10 to 24 shall apply in relation to such revision as they apply in relation to the first preparation of a Roll.*

(4) *Where at any time between the publication in draft of the revised Roll under sub-rule (2) or of the Roll and list of amendments under sub-rule (3) and the final publication of the same under rule 23, any names have been directed to be included in the Roll for the time being in force under section 29, the Registration Officer shall cause the names to be included also in the revised Roll unless there is, in his opinion, any valid objection to such inclusion.”*

22.3. The majority view of the Constitution Bench of the Hon’ble Supreme Court in ***Lakshmi Charan Sen Vs. A.K.M. Hassan Uzzaman and others (1985) 4 SCC 689*** speaking through the then Chief Justice of India Y.V. Chandrachud, has held as under:-

“27...In Rampakavi Rayappa Belagali (1970) 3 SCC 147, it was held that the scheme of the Act of 1950 and the amplitude of its provisions show that the entries made in a electoral roll of a constituency can only be challenged in accordance with the

machinery provided by the Act and not in any other manner or before any other forum unless, some question of violation of the provisions of the Constitution is involved. In Mohinder Singh Gill (1978) 1 SCC 405, Krishna Iyer J., speaking for the Constitution Bench, has considered at great length the scope and meaning of Article 329(b) of the Constitution. Describing that Article as the "Great wall of China", the learned Judge posed the question whether it is so impregnable that it cannot be bypassed even by Article 226. Observing that "every step from start to finish of the total process constitutes 'election', not merely the conclusion or culmination" the judgment concludes thus:

"The rainbow of operations, covered by the compendious expression 'election', thus commences from the initial notification and culminates in the declaration of the return of a candidate."

28. We have expressed the view that preparation and revision of electoral rolls is a continuous process, not connected with any particular election. It may be difficult consistently with that view, to hold that preparation and revision of electoral rolls is a part of the 'election' within the meaning of Article 329(b). Perhaps, as stated in Halsbury in the passage extracted in Ponnuswami AIR 1952 SC 641., the facts of each individual case may have to be considered for determining the question whether any particular stage can be a part of the election process in that case. In that event, it would be difficult to formulate a proposition which will apply to all cases alike.
(emphasis supplied)

22.4. Respondents No.1 and 2 in their reply have tried to justify the delimitation on the ground that the new voters, who have attained the age of

18 years, are to be included in the electoral rolls whereas names of dead persons are to be excluded. A perusal of the notice dated 16.12.2022 and approval dated 20.12.2022 does not indicate any such discussion on these grounds. It is a trite law that the impugned action of the statutory functionaries when made on certain grounds, its validity must be adjudged for the reasons mentioned and these decisions cannot be supplemented by fresh reasons in the shape of affidavits or replies. The Constitution Bench of the Hon'ble Supreme Court in ***Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others (1978) 1 SCC 405*** speaking through Justice Krishna Iyer, has held as under:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1)

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older:"

On the basis of the above discussion, the impugned delimitation conducted on these two grounds is liable to be set aside and we hold that the delimitation process for re-adjustment of wards cannot be done on these grounds, as the preparation and revision of electoral rolls on account of death or attaining the age of 18 years is a continuous process and it has no nexus to a particular election.

WHETHER THE OFFICIAL RESPONSIBLE FOR CARRYING OUT THE DELIMITATION ARE NOT BOUND TO FOLLOW THE DRILL OF RULES OF 1972?

23. The delimitation of the wards in the impugned exercise was done in a most opaque manner and in complete violation of the procedure prescribed under Rule 3 to 8 of the Rules of 1972. The respondents No.1 to 4 are bound to follow the drill of the above provisions and they cannot deviate from the prescribed procedure under these Rules. The Hon'ble Supreme Court has laid down the ratio that the principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed in the statute. Reliance in this regard can be placed on *Kunwar Pal Singh (dead) by LRs Vs. State of U.P. and others (2007) 5 SCC 85; State of Uttar Pradesh vs. Singhara Singh and others AIR 1964 SC 358 and Hukam Chand Shyam Lal Vs. Union of India and others AIR 1976 SC 789*. Similar observations were made by a three Judge Bench of the Hon'ble Supreme Court in *Anuradha Bhasin vs. Union of India (2020) 3 SCC 637* where, speaking through Justice N.V. Ramana, it has held as under:-

“98. We also direct that all the above procedural safeguards, as elucidated by us need to be mandatorily followed. In this context, this Court in the *Hukam Chand Shyam Lal (supra)* and observed the following:-

“18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes (sic) of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature.”

23.1. The official respondents are required to perform their duty within the four corners of the statutory provisions to carry out the delimitation of wards by scrupulously following the drill of the procedure prescribed therein. The Hon’ble Supreme Court has articulated the principle that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. In *Life Insurance Corporation of India Vs. Consumer Education and Research Centre (1995) 2 SCC 480*, the Hon’ble Supreme Court has laid down that duty to act fairly is a part of fair procedure envisaged under Articles 14 and 21 of the Constitution of India. Every activity of the public authority or those under public duty must be received and guided by public interest. In the present case, the same official respondents who embarked upon the misadventure of issuance of notification for holding elections on 01.08.2023 and 05.10.2023 during the pendency of present writ petitions, are also responsible for conducting the delimitation process. Apparently, it is done with an intent to frustrate the case pleaded by the petitioners herein and to

avoid judicial scrutiny of their actions, which compels this court to infer breach of duty and colourable exercise of power on their part. They were fully conscious of the fact that delimitation of wards in the respective local bodies is already under challenge and pending consideration of this Court.

23.2. It is trite law that a statute should be read as it is and this Court cannot contort the same and read something which is not expressly provided therein. The Hon'ble Supreme Court in ***B. Premanand and others versus Mohan Koikal and others, (2011) 4 SCC 266***, has articulated the principle governing the interpretation of the statute and reiterated the literal rule of interpretation by observing the following:-

“30. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language.

31. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean.”

23.3 A three Judge Bench of the Hon'ble Supreme Court in ***State of H.P. v. Pawan Kumar (2005) 4 SCC 350***, speaking through Justice G.P. Mathur, while stating that the cardinal rule of interpretation of statutes is to read the statute literally and give the words their grammatical and natural meaning has held as under:-

“7. One of the basic principles of interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity (See Craies on Statute Law, Seventh ed. page 83-85). In the well known treatise - Principles of Statutory Interpretation by Justice G.P. Singh, the learned author has enunciated the same principle that the words of the Statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the Statute to suggest the contrary (See the Chapter - The Rule of Literal Construction -p.78 – 9thEdn.). This Court has also followed this principle right from the beginning. In Jugalkishore Saraf v. M/s Raw Cotton Co. Ltd. AIR 1955 SC 376, S.R. Das, J. said:

"The cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If,

however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."

23.4 In view of the above settled principles, we find that the Rules of 1972 and the 1995 Order are clear and unambiguous and therefore, we hold that the respondents are duty bound to follow the drill enunciated in these Rules/Order, as the delimitation is not a discretionary administrative exercise but it is a sacrosanct statutory duty to be performed strictly in accordance with the Rules of 1972 and the 1995 Order.

WHETHER THE ACTION OF THE RESPONDENTS BY ISSUING THE NOTIFICATION DATED 01.08.2023 AND 05.10.2023 CAN BE TERMED AS BONA FIDE?

24. In CWP No.7548 of 2023, the petitioners had approached this Court on 16.02.2023. CWP Nos.17204, 15263 and 16079 of 2023 were filed on 24.07.2023, 03.07.2023 and 17.07.2023 respectively, meaning thereby, all the writ petitions were filed much prior in time than the notifications dated 01.08.2023 and 05.10.2023 issued under Section 13-A of the Municipal Act and Section 7-A of the Act of 1976 respectively for expressing intention of holding the general elections to elect the members of the Municipal Councils/Municipal Corporations/Nagar Panchayats were issued. An advance notice to the official respondents was given at the time of filing of the writ petitions. Therefore, the facts of the present case clearly indicate that the petitioners had approached the respondents through representations and this Court well before the issuance of notifications dated 01.08.2023 and 05.10.2023. These notifications were issued during the pendency of the

present writ petitions and were attached with the short reply filed by the respondents. Merely by efflux of time, the respondents cannot frustrate the legal rights of the petitioners by issuing notifications and then plead the bar under Article 243ZG of the Constitution of India. Respondent No.1, who issued the above notification, is overall incharge of the Department of Local Government and is responsible for conducting delimitation exercise as provided under the Rules of 1972.

24.1 It is well settled that actions of the State with an oblique or indirect object will be attributed to 'malice in law'. A two Judge Bench of the Hon'ble Supreme Court in *Kalabharati Advertising Vs. Hemant Vimalnath Narichania & others (2010) 9 SCC 437* speaking through Justice Dr. B.S. Chauhan, has held as under:-

"25. The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v. Shivakant Shukla [(1976) 2 SCC 521, S.R. Venkataraman v. Union of India (1979) 2 SCC 491, State of A.P. v. Goverdhanlal Pitti (2003) 4 SCC 739, BPL

Ltd. v. S.P. Gururaja (2003) 8 SCC 567) and W.B. SEB v. Dilip Kumar Ray (2007) 14 SCC 568J.”

24.2 In the light of the above, the approach of the respondents seems not be bona fide and any such attempt to defeat the legal rights of the public would be resisted by this Court. The respondents cannot be allowed to take shelter of the bar contained under Article 243ZG of the Constitution of India as this would amount to subjecting the petitioners to irreversible repercussions and consequences, which cannot be substantially redressed afterwards.

WHETHER A SUBSEQUENT NOTIFICATION FOR THE SAME PURPOSE CAN BE ACTED UPON WHEN THE EARLIER NOTIFICATION STILL CARRIES THE FORCE OF LAW?

25. Another conspicuous lapse has drawn our attention. The earlier notification dated 31.01.2021 issued by respondent No.1 finalising the composition and command areas of each constituency as well as detailing the boundaries of concerned ward has not been annulled or de-notified by issuing any subsequent notification. The fresh notification dated 27.01.2023 has been issued only to the extent of nullifying the reservation of wards for all categories made in earlier delimitation exercise. The gist of the notification dated 27.01.2023 is reproduced under:-

“NOTIFICATION

The 27th January, 2023

No.3/32/23-5LG3/380.- In exercise of the powers conferred under Section 240(1) (b) & (c) of the Punjab Municipal Act, 1911 and Rule 9 of the Delimitation of Wards of Municipalities Rules, 1972 and all other powers enabling him in this behalf, the Government of Punjab is pleased to determine the seat numbers reserved for General and Scheduled Castes, Ladies (included Scheduled Castes ladies) and

Backward Classes in the Municipal Council, Dera Baba Nanak, District Gurdaspur as under:-

xxxxx

xxxxx

Note: All the previous notifications, if any, regarding seat number reserved for General, Scheduled Castes, Ladies (Including Scheduled Castes Ladies) and Backward Classes in the above mentioned municipality(ies) shall be deemed to have been cancelled with immediate effect from the date of issuance of this notification.”

25.1 A perusal of the above notification dated 27.01.2023 indicates that the earlier notification vide which readjustment of wards was done finalising the composition and command areas of each constituency and detailing the boundaries of concerned ward still holds the force of law. The subsequent notification of the impugned delimitation exercise finalising the composition and command areas of each constituency and detailing the boundaries of concerned ward was not issued in supersession of earlier notification. A strange incongruity has been created by the official respondents by issuing two notifications with the different composition, different command areas and different boundaries of wards. On this ground alone when earlier notification still holds the field, the subsequent notification for the same purpose cannot be acted upon.

THE IMPORTANCE OF THE DELIMITATION EXERCISE IN FREEDOM AND FAIRNESS OF THE ELECTION PROCESS

26. Democratization of the local bodies was done by the 73rd and the 74th constitutional amendments by laying legal and constitutional foundation to establish "*democracy at the grass root level*". The 74th Amendment Act (Part IXA) provides for the constitution of three types of municipalities in

urban areas, with Nagar Panchayats in peri-urban areas, Municipal Councils in small towns and the Municipal Corporations in big cities. It mandates direct elections every five years at the municipality level, with a mandatory quota for Scheduled Castes and Scheduled Tribes, apart from reserving one-third of seats for women. In the Twelfth Schedule, a provision is made for a list of 18 subjects that can be entrusted to these Urban Local Bodies (ULBs) in due course. It also provides for the creation of State Finance Commissions to decide on sharing of taxes, duties and funds from the State Consolidated Funds for local democracy. One of the main objectives of this amendment is to provide a mechanism for these ULBs to fully participate in planning, implementation and performance review of various schemes with the participation of all stakeholders including women and other vulnerable groups.

26.1. Elections are not merely rituals to be performed periodically. The elections are the only effective tool to ascertain the will of the people for genuine self-governance at grass root level, which is possible only through free and fair elections. 'Freeness' and 'fairness' is a universally recognized standard by which a level playing field is ensured. It not only ensures that each competitor has an equal chance to succeed, but also that they all play by the same set of rules. The concept of free and fair election includes the preliminary stages to election such as delimitation of constituencies and preparation or revision of electoral rolls. The entire electoral process is hugely dependent upon these stages for the free and fair election to really take place. The purity and sanctity of the election process and level playing

field is exclusively reliant on meticulous adherence to the principles enshrined in Rule 6 of the delimitation Rules. These principles play a crucial role in providing equal democratic space in each constituency for under-represented groups such as women, SCs, and STs compatible with the legislative intent. The principle of geographic compactness of the area giving due regard to physical features and existing boundaries of administrative units, facilities of communication and public convenience, reservation of wards where population of reserved categories viz; Scheduled Caste, Backward Class are largest, rotation of reserved seats for Women and other categories in different wards in the Municipality, door to door survey of population to collect identifiable data for the purpose of reservation of wards are central to entire delimitation process in keeping with the concept of democracy as also with the notion of level playing field. In a free and fair election, an independent and impartially administered delimitation process is essential. The authorities responsible for carrying out the delimitation are bound to follow the drill of the delimitation Rules in scrupulous compliance of these principles. The whole electoral process would be vitiated if any deviation from these principles is made by the concerned authority while carrying out delimitation. The election system must follow these Rules meticulously to allow the electorate's desires to find valid expression through the electoral results. It is vital for the very meaning of democracy at ground level that the election structure is unbiased and transparent. An election cannot be considered "free and fair" if there is an erosion of level playing field. It would certainly impair the ability of these hitherto

underrepresented groups to assert their political rights and emerge as leaders. A skewed playing field thus may stifle their capability to compete in elections and survive between elections. As such, the delimitation process must consistently conform to these principles to ensure high degree of confidence of the public in delimitation process. These principles are crucial for effective enjoyment of the equal opportunity provided to all to freely participate, contest and vote in the elections. The candidates are required to know explicitly, unambiguously and well in advance the voters of the wards, reservation of wards etc. so that they can better plan their contest, as contesting an election is a valuable right, which cannot be taken away by carrying out a colourable exercise of delimitation of the wards to the disadvantage of some of the prospective contestants and to the favour of others which, thus tantamount to inequitable treatment in the election process. The State being a Welfare State ought to have adopted a procedure, which is transparent and equitable to all contestants.

26.2. The role of the Constitutional Courts is substantial in acknowledging and endorsing the fundamental principles relating to periodic free and fair elections. The provisions for ensuring free and fair elections are not only incorporated in the Constitution but there are other exhaustive additional statutory provisions and rules regulating election process covering a myriad of relevant procedures including delimitation of constituencies, qualifications and disqualifications of voters and candidates. There are several precedents of election legislation in which great contributions have been made by the courts by conducting a real assessment of the democratic

arrangement and issuing necessary directions to ensure that the election process is free and equal for all parties. Any attempt made by a public authority to deviate from the prescribed procedure or when the public authority has failed to exercise or has wrongly exercised the power vested in it by the statute in performance of its duty to weaken democratic principles have been resisted by the Constitutional Courts. The courts have made a significant contribution to the evolution of election law by providing dynamic meaning to the provisions of law. It is the responsibility of government to establish and strengthen democratic processes and institutions, along with establishing an effective, impartial and non-discriminatory procedure for the electoral process including delimitation. In the event of any failure to provide impartial, fair and transparent electoral process, the Courts intervene, in its sustained efforts to protect the rights and interests of the masses to ensure indispensable elements of 'freeness' and 'fairness' in election process. States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process to rule out any doubt regarding its integrity as a testimony of legitimisation of local governance at grass root level to genuinely open up the democratic spaces to new voices from under-represented groups like women, STs and SCs.

26.3. The Hon'ble Supreme Court recently held that as a general rule, the courts should not interfere in election matters, however, clarified that the courts must interfere in election process if there is unjust executive action or attempt to disturb level playing field. The conduct of elections to the Urban

Local Bodies is the sole domain of State Election Commission and it is not bound to hold election as per the tentative date of election announced by the Department of Local Bodies. The stage of judicial hands off for the courts to interfere in any manner would arise only after the notification by the State Election Commission announcing the schedule of election indicating date of nomination and date of voting and Model Code of Conduct is implemented. It is the stage when the elections can be termed as “imminent” otherwise the authority (Secretary to Government of Punjab, Department of Local Bodies) which is responsible for carrying out delimitation and issuance of notification under Section 13-A of the Municipal Act announcing the proposed tentative date of elections. The same authority in order to avoid the scrutiny of this court can issue two notifications one after the other by finalizing the delimitation under Rule 8 of the Rules of 1972 and announcement of elections within few days. As is done in the present case, the notifications for announcement of election were issued during the pendency of these writ petitions. In our considered opinion in such as a scenario, the officials responsible for the complete derogation of the principles provided under Rule 6 of the Rules of 1972 for delimitation, cannot be allowed to take shelter of the bar under Article 243ZG of the Constitution of India. Allowing them to do so, in fact, would mean allowing them to eat their cake and have it too.

CONCLUSION IN CWP NO.15263 OF 2023

27. The argument raised by the counsel for the petitioners in CWP No.15263 of 2023 that constitution of the Board was not in terms of Clause

3 (1) (viii) is not sustainable. Rule 3 of the 1995 Order is reproduced as under:-

“3. Constitution of Board. [Section 8] - (1) For the purpose of carrying out the provisions of this order the Government shall constitute a Board for each Municipal Corporation consisting of the following members; namely :-

(i) the [Deputy Commissioner of the District]1 in which the Municipal Corporation is situated or any other officer nominated by him in this behalf;

(ii) the Director of any other officer nominated by him in this behalf;

(iii) the Mayor or in his absence the Senior Deputy Mayor and in the absence of both, the Deputy Mayor of the Corporation concerned, as the case may be.

(iv) the Commissioner of the Municipal Corporation concerned.

[(v) member of the Punjab Legislative Assembly representing the concerned Municipal Corporation wholly or partly;

(vi) the Deputy Director (Regional), Local Government;]

(vii) the Joint Commissioner or the Assistant Commissioner of the Municipal Corporation concerned.

(viii) **two member nominated by the Government by notification.**

(2) The Board shall associate with itself for the purpose of assisting in the performance of its functions not more than five councillors of the Corporation having due regard to the representation of various political parties and groups in the composition of the Corporation:

Provided that nothing contained hereinbefore shall apply to a Corporation which has been dissolved.”

27.1. The above Rule went through amendment in the year 2014, which was made applicable w.e.f. 13.08.2014 and the word ‘one member’ was substituted by ‘two members’. As such, we do not find any infirmity with the action of respondents in constituting the Board under Clause 3 of the

1995 Order. It is apt to mention here that the petitioners in CWP No.15263 of 2023 have not challenged the delimitation process. Consequently, CWP No.15263 of 2023 is dismissed.

CONCLUSION IN CWP NOS. 7548, 17204 and 16079 of 2023.

28. As an upshot of above discussion, we hold that the entire delimitation exercise, since inception, in Municipal Councils of Dera Baba Nanak, Dharamkot and Municipal Corporation Phagwara impugned in CWP Nos.7548, 17204 and 16079 of 2023 respectively is conducted on irrelevant consideration and by committing glaring breach of Rules 3 to 8 of the Rules of 1972. As such, the entire delimitation exercise is declared to be illegal. Once we have declared the entire delimitation exercise from the very beginning having not been conducted validly, subsequent notifications issued on the basis of such delimitation cannot survive either. As such, notifications dated 27.01.2023, 18.01.2023 and 05.09.2023 are declared invalid having no force of law. The delimitation process under challenge is set aside on the following grounds:-

- (i) The constitution of the Delimitation Board is done in clear violation of Rule 3 of the Rules of 1972. Five members from various political parties and groups in the composition of the Municipality were not associated in the Board, which has disturbed the level playing field.
- (ii) The impugned delimitation exercise is set aside as the same is done by respondent No.5 and not by the Delimitation Board under Rule 4 of the Rules of 1972. Further, the number of

wards and total population is identical i.e. 13 wards and population of 11197 and neither there is a single digit increase in the population nor is there any alteration of municipal limits, necessitating the fresh delimitation. Thus, we hold that the impugned delimitation would not be valid as per Rule 4 of the 1972 Rules.

- (iii) The principles enunciated under Rule 6 of the Rules of 1972 for delimitation of wards of Municipality i.e. determination of wards on the basis of geographical compactness, physical features, existing boundaries of administrative units, if any, facilities of communication and public convenience were not followed.
- (iv) The population survey by visiting door to door which is crucial for collecting the identifiable data for the purpose of reservation of wards was not done and no such order was passed by respondent No.2.
- (v) As per Rule 12 (e) of the Punjab Municipal General Rules, 1979, while issuing a notice for publication of the notification under Rule 8 of the Rules of 1972, 30 days' time is prescribed from the date of its publication for inviting objections or suggestions from the persons interested whereas in the present case, admittedly, only 7 days' time was given to do the same.
- (vi) The impugned notifications, which are under challenge in the writ petitions are issued without de-notifying or superseding

the earlier notifications, which still have the force of law and therefore, for the same purpose, two notifications cannot be issued.

28.1. Consequently, CWP Nos.7548, 17204 and 16079 of 2023 are allowed in the above terms and following directions are issued:

- (i) The State Election Commission is at liberty to hold election to the Municipal constituencies (wards) as it existed before the impugned delimitation exercise (which resulted into issuance of notifications dated 27.01.2023, 18.01.2023 and 05.09.2023) in the first fortnight of the November as intended by the State Government vide notifications dated 01.08.2023 and 05.10.2023.
- (ii) As per the information given by the learned State counsel, process of revision and finalization of the electoral roll is underway. Therefore, the State Election Commission is at liberty to conclude the revision/finalization of the electoral rolls and issue appropriate notification for conducting elections to local bodies by giving schedule of election, providing dates for filing nomination papers, scrutiny of nomination papers and voting etc.

28.2. Pending misc. applications, if any, shall stand disposed of in all the writ petitions.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

October 17, 2023
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No