

ELECTION COMMISSION OF INDIA

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v.

MOHD. ABDUL GHANI AND ORS.

NOVEMBER 1, 1995

[J.S. VERMA, N.P. SINGH AND K. VENKATASWAMI, JJ.]

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Election Law :

Representation of the People Act, 1950 : S.9 (1)(b) : Delimitation Act, 1972 : S. 11 (1)(b) : Delimitation of Parliamentary and Assembly Constituencies Order, 1976 : Constitution of India : Article 82, third proviso :

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Election Commission—Power to maintain Delimitation Order up to date—Held, the power is subject to restriction that in updating Delimitation Order occasioned by an alteration of boundaries or name of any district or any territorial division, no change is to be made in the boundaries or areas or extent of any constituency as shown in Delimitation Order

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Certain villages falling in the territorial division of District Murshidabad, were included in territorial division of District Malda for administrative purpose as a result of geographical changes brought about in the area by River Ganges on changing its course. However, for election purposes these villages continued to form part of 8-Jangipur Parliamentary Constituency in accordance with the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 on the basis of previous census held in 1971. In 1984, residents of these villages filed a writ petition before the High Court claiming that the villages having become part of Malda District, should also form part of Malda Parliamentary Constituency. They prayed for a writ of mandamus to issue to the Election Commission to effect such a change by virtue of S.9 (1)(b) of the Representation of the people Act, 1950. The High Court allowed the prayer and also granted a Certificate under Article 132 of the Constitution for appeal to this Court. Accordingly, the Election Commission filed the appeal.

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On the question : whether the geographical change resulting in the villages becoming part of District Malda when earlier they formed part of District Murshidabad required those villages to be included in Malda Pareliamentary Constituency instead of Jangipur Parliamentary Con-

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A constituency as shown in the Delimitation Order, 1976,

Allowing the appeal, this Court

HELD : 1.1. Keeping in view the third proviso to Article 82 of the Constitution and the entire scheme of the Representation of the People Act, 1950 and the Delimitation Act, 1972, the nature of power conferred on the Election Commission under S.9 (1)(b) of the R.P. Act and under S. 11(1)(b) of 1972 Act is merely to update the Delimitation Order by making necessary changes on account of subsequent events and to correct the description in the Delimitation Order which has become inappropriate. This power cannot extend to alteration of the boundaries or area or extent of any constituency as shown in the Delimitation Order. [642-G]

1.2. Both the provisions, i.e., S.9 (1)(b) of the R.P. Act, 1950 and S.11(1)(b) of the Delimitation Act, 1972 provide that where there is any alteration in the boundaries or in the name of any district on any territorial division mentioned in the order, such amendments which have become necessary to update the Delimitation order, should be made. But, the additional words in S.11(1)(b) of the Delimitation Act, i.e., "So, however, that the boundaries or areas or extent of any constituency shall not be changed by any such notification" leave no doubt that the power to maintain Delimitation Orders up-to-date conferred on the Election Commission is subject to the restriction that in updating the Delimitation Orders occasioned by an alteration of the boundaries or name of any district or any territorial division it does not make any change in the boundaries or areas or extent of any constituency as shown in the Delimitation Order. [641-C, 642-F]

1.3. The exercise required to be performed by the Election Commission as a result of any alteration in the boundaries or name of any district or any territorial division mentioned in the Delimitation Order has to be made only by changing the description of that area which has undergone a geographical change to correctly describe that part of the constituency, the boundaries, area and extent of the constituencies remaining the same, i.e., unaltered. Thus, there is a specific restriction against any alteration or change in the boundaries or area or extent of any constituency as shown in the Delimitation Order and the exercise of updating the Delimitation Order has to be made merely for the purpose of correcting the description of that part of the constituency which has undergone a change in descrip-

tion because of the subsequent change in the boundaries or name of any district or any territorial division mentioned in the Delimitation Order. A

[642-G-H, 643-A]

1.4. The order of the High Court granting the prayer is contrary to the express prohibition contained in section 11 (1)(b) of the Delimitation Act, 1972. Therefore, a *mandamus* could not be issued to the Election Commission to perform an exercise expressly forbidden by law. [643-F] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4537 of 1984.

From the Judgment and Order dated 14.11.84 of the Calcutta High Court in C.R. Case No. Nil (W) of 1984. C

Girish Chandra for the appellant.

A.K. Ganguli, Ms. Aruna Mathur and A. Mariarputham for the Respondents. D

The Judgment of the Court was delivered by

J.S. VERMA, J. Sixteen villages in the territorial division of District Murshidabad on the west bank of river Ganges in the State of west Bengal formed part of 8-Jangipur Parliamentary Constituency, and the elections in 1977, 1980 and 1982 were held on this basis. This is how these villages were described in the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 (for short, "the Delimitation Order, 1976"). However, the river Ganges having started changing its course in 1957, ultimately brought about the change because of which these 16 villages came to be located towards the east bank of the river. After this change these villages came to form part of the territorial division named as District Malda. The State Government made the consequential changes in the description of these villages when they become part of District Malda for all administrative purposes. In spite of this geographical change resulting in inclusion of these 16 villages in the territorial division of District Malda for administrative purposes, the position of these villages remained unaltered for election purposes and they continued to form part of 8-Jangipur Parliamentary Constituency in accordance with the Delimitation Order of 1976 made on the basis of the previous census held in 1971. The next census is now due after the year 2000. E
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A The respondents who are residents of these villages filed a writ petition in 1984 in Calcutta High Court claiming that as a result of the above geographical change, these 16 villages should now form part of the Malda Parliamentary Constituency since they have become a part of District Malda instead of the earlier District Murshidabad. It was claimed that this is the duty cast on the Election Commission to make such a change by virtue of Section 9(1)(b) of the Representation of the People Act, 1950 (for short "the R.P. Act, 1950). A writ of mandamus was claimed in the writ petition to direct the Election Commission to make this change. That writ petition has been allowed by a learned Single Judge of the High Court, who has also granted a certificate under Article 132 of the Constitution for appeal to this Court. Hence this appeal.

D The only question for decision is : Whether the above geographical change resulting in these 16 villages becoming part of District Malda when earlier they formed part of District Murshidabad, requires these villages to be included now in Malda Parliamentary Constituency instead of Jangipur Parliamentary Constituency as shown in the Delimitation Order, 1976? This question has to be answered with reference to Section 9(1)(b) of the R.P. Act, 1950 and Section 11(1)(b) of the Delimitation Act, 1972 read with the Third proviso to Article 82 of the Constitution of India.

E The relevant provisions are as under :

Constitution of India

"81. *Composition of the House of the People.*- (1) Subject to the provisions of Article 331, the House of the People shall consist of-

F (a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the states, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

G (2) For the purposes of sub-clause (a) of clause (1) -

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States ; and

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(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State : A

Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six million. B

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published : C

Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census." D

"82. *Readjustment after each census.*- Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine : E

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House : F

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment : G

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into Territorial Constituencies under this article. H

A *R.P. Act. 1950*

"9. *Power of Election Commission to maintain Delimitation Order Up-to-date.*- (1) The Election Commission may, from time to time, by notification published in the Gazette of India and in the Official Gazette of the State concerned -

B (a) correct any printing mistake in the Delimitation of Parliamentary and Assembly Constituencies Order, 1966, or, as the case may be, the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 or any error arising therein from inadvertent slip or omission ;

C (aa) make such amendments in the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 as appear to it to be necessary or expedient for consolidating with that Order any notification or order relating to delimitation of Parliamentary or Assembly Constituencies (including reservation of seats for the Scheduled Castes or the Scheduled Tribes in such constituencies) issued under any Central Act ;

D (b) where the boundaries or name of any district or any territorial division mentioned in the Order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the order up-to-date.

E (2) Every notification under this section shall be laid as soon as may be after it is issued, before the House of the People and the Legislative Assembly to the State concerned."

F *Delimitation Act, 1972*

G "9. *Delimitation of constituencies.*- (1) The Commission shall, in the manner herein provided, then distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State to single-member territorial constituencies and delimit them on the basis of the latest census figures, having regard to the provisions of the Constitution and the provision of the Acts specified in Section 8 and also to the following provisions, namely :-

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(a) all constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience; A

(b) every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency; B

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(2) The Commission shall -

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(d) thereafter by one or more orders determine -

(i) the delimitation of parliamentary constituencies, and

(ii) the delimitation of assembly constituencies, of each State. D

10. Publication of orders and their date of operation.- (1) The Commission shall cause each of its orders made under section 8 or section 9 to be published in the Gazette of India and in the Official Gazettes of the States concerned. E

(2) Upon publication in the Gazette of India, every such order shall have the force of law and shall not be called in question in any Court.

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11. Power to maintain delimitation orders up-to-date.- (1) The Election Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned-

(a) correct any printing mistake in any of the orders made by the Delimitation Commission under section 9 or any error arising therein from an inadvertent slip or omission; and G

(b) where the boundaries or name of any district or any territorial division motioned in any of the said orders are or is altered, make such amendments as appear to it to be necessary or expedient for H

A bringing the orders up-to-date, *so. however that the boundaries or areas or extent of any constituency shall not be changed by any such notification.*

B (2) Every notification under this section shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned."

(emphasis supplied)

C Article 81 of the Constitution deals with composition of the House of the People. Article 81 (2)(b) indicates that each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State and Article 81 (3) indicates that the population means the population as ascertained at the last preceding census. Article 82 then provides for readjustment after each

D census and the Third proviso therein makes it clear that until the relevant figures in the first census taken after the year 2000 have been published "it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article." This is the prescribed limit within which

E readjustment can be made till the next census figures have been published after the year 2000.

F The Representation of the People Act, 1950, is an Act to provide the allocation of seats in and the delimitation of constituencies for the purpose of election to, the House of People and the Legislatures of States, and certain matters connected therewith Section 9 thereof deals with the power of Election Commission to maintain the Delimitation Order up to date. The duty of the Election Commission under Section 9 is to update the Delimitation Order, 1976 in the manner provided therein. This power has, therefore, to be construed in the context of the duty of the Election

G Commission to update the Delimitation Order, 1976, if any change takes place as specified in the provision. The mandamus issued by the High Court in the present case is for the performance of this obligation in accordance with Section 9 (1)(b), which is as under :

H "(1) The Election Commission may from time to time, by notification published in the Gazette of India and in the Official Gazette

of the State concerned, -

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(b) where the boundaries or name of any district or any territorial division mentioned in the Order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the Order up-to-date."

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This provision is attracted "where the boundaries or name of any district or any territorial division mentioned in the order are or is altered", to "make such amendments as appear to it to be necessary or expedient for bringing the order up-to-date." It means that where there is any alteration in the boundaries or in the name of any district or any territorial division mentioned in the order, such amendments which have become necessary to update the Delimitation Order, should be made. According to the respondents (writ petitioners) and as held by the High Court, this duty can be performed in the present case only by inclusion of the aforesaid 16 villages in the Malda Parliamentary constituency and their exclusion from the Jangipur Parliamentary Constituency of which they form a part as shown in the Delimitation Order, 1976. The question is : Whether the Delimitation Order can be made up-to-date only by change so the boundaries of these two constituencies, as suggested or by change of the description of these villages in the Delimitation Order, 1976, describing them now as part of District Malda instead of District Murshidabad without disturbing their continuance as part of the Jangipur Constituency? The relevant provision in the Delimitation Act, 1972 must also be seen now.

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The Delimitation Act, 1972 is an Act to provide for the readjustment of the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies for elections to the House of the People etc., and for matters connected therewith. Section 9 prescribes the manner in which the Commission shall distribute the seats in the House of the People allocated to each State and delimit them on the basis of the latest census figures having regard to the provisions of the Constitution and the provisions of the Acts specified in Section 8 and the provisions specified therein. Section 10 prescribes the mode of publication of orders of the Commission and their date of operation ; and adds that "upon publication in the Gazette of India, every such order shall have the

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A force of law and shall not be called in question in any Court." Section 11 (1)(b) then confers power on the Election Commission to maintain Delimitation Orders up to date which is as under :-

B "(1) The Election Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned -

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C (b) where the boundaries or name of any district or any territorial division mentioned in any of the said orders are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the orders up-to-date, *so, however, that the boundaries or areas or extent of any constituency shall not be changed by any such notification*"

D (emphasis supplied)

E A comparison of Section 11(1)(b) of the Delimitation Act, 1972 with Section 9(1)(b) of the R.P. Act, 1950 shows that except for the last part of Section 11(1)(b) it is the same as Section 9(1)(b) of the R.P. Act, 1950; and the additional words in Section 11(1)(b) are - "so, however, that the boundaries or areas or extent of any constituency shall not be changed by any such notification." These additional words leave no doubt that the power to maintain Delimitation Orders up-to-date conferred on the Election Commission is subject to the restriction that in updating the Delimitation Orders occasioned by an alteration of the boundaries or name of any district or any territorial division it does not make any change in the boundaries or areas or extent of any constituency as shown in the Delimitation Order. Obviously, the exercise required to be performed by the Election Commission as a result of any alteration in the boundaries or name of any district or any territorial division mentioned in the Delimitation Order has to be made only by changing the description of that area which has undergone a geographical change to correctly describe that part of the constituency, the boundaries, areas and extent of the constituencies remaining the same, i.e., unaltered. In other words, there is a specific restriction against any alteration or change in the boundaries or area or extent of any constituency as shown in the Delimitation Order and the exercise of updating the Delimitation Order has to be made merely for the

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purpose of correcting the description of that part of the constituency which has undergone a change in description because of the subsequent change in the boundaries or name of any district or any territorial division mentioned in the Delimitation Order. A

There can be no doubt that Section 11(1)(b) of the Delimitation Act, 1972 is incapable of any other construction since it does not permit the making of any change in the boundary or area or in the extent of the constituency as described in the Delimitation Order because of the express prohibition therein. Section 9(1)(b) of the R.P. Act, 1950, must be construed similarly for a harmonious construction of both these provisions. If the same words which are used in Section 9(1)(b) are used also in Section 11(1)(b) with this further addition containing the express restriction, there is no occasion to construe Section 9(1)(b) of the R.P. Act, 1950 differently to permit an exercise expressly forbidden by Section 11(1)(b) of the Delimitation Act, 1972. B C

In our opinion, the entire scheme of these enactments and the nature of power conferred on the Election Commission to merely update the Delimitation Order by making the necessary changes on account of subsequent events to correct the description in the Delimitation Order which has become inappropriate, lead to the conclusion that the power of the Election Commission under these provisions is only of this kind. This power cannot extend to alteration of the boundaries or area or extent of any constituency as shown in the Delimitation Order. The prayer made in the writ petition filed in the High Court which has been granted by the High Court is contrary to the express prohibition contained in Section 11(1)(b) of the Delimitation Act, 1972. This being so, a mandamus could not be issued to the Election Commission to perform an exercise expressly forbidden by law. This appeal has, therefore, be allowed. D E F

Consequently, the appeal is allowed. The judgment of the High Court is set aside.

R.P.

Appeal allowed.