

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No 2071/2022.

Date of institution 25.05.2022.

Date of decision 07.07.2022.

Inhabitants of union council Ghalan through:-

1. Muhammad Sadique Khan S/o Sain Khan.
2. Moalan Shoukat Arif S/o Malik Muhammad Arif Khan.
3. Sardar Mushtaq Hafeez S/o Muhammad Hafeez Khan.
4. Sardar Muzafar Khan S/o Muhammad Akbar Khan.
5. Haji Karamat Hussain S/o Jahangir Khan.
6. Syed Mushtaq Hussain Gillani S/o Abdul Wahad Shah.
7. Syed Iftikhar Hussain Kazmi S/o Sher Shah.
8. Haji Muhammad Kabir S/o Muhammad Habib Khan.
9. Sardar Abdul Qadir S/o Muhammad Bashir.
10. Molana Ashraf Ali S/o Muhammad Ameen.

...Petitioners

VERSUS

1. Azad Government of the State of Jammu and Kashmir through Secretary Local Government and Rural Development having his office at New Secretariat Muzaffarabad.
2. Secretary Local Government and Rural Development Azad government of the State of Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
3. Chief Election Commissioner Azad Jammu & Kashmir having his office at New Secretariat Muzaffarabad.
4. Appellate/decision making Authority Delimitation/ District & Session Judge Bagh, Azad Jammu & Kashmir.
5. Delimitation Committee through Deputy Commissioner/ Chairman Delimitation district Bagh, Azad Jammu & Kashmir.
6. Assistant Commissioner/Delimitation Officer district Bagh, Azad Jammu & Kashmir.

.....Respondents

WRIT PETITION

***Before:- Justice Sadaqat Hussain Raja, CJ.
Justice Syed Shahid Bahar, J.
Justice Sardar Muhammad Ejaz Khan, J.***

PRESENT:

Sardar M.R. Khan, Advocate for the petitioner.

Legal Advisor for Election Commission.

Legal Advisor on behalf of Local government.

A.A.G on behalf official-respondents.

ORDER:

(Justice Syed Shahid Bahar, J.) Instant writ petition has been filed under Article 44 of Azad Jammu and Kashmir Interim Constitution, 1974, whereby following relief has been solicited by the petitioners:-

“It is, therefore, prayed on behalf of petitioners that this Hon’ble Court may very graciously be pleased to issue a high prerogative writ declaring the order passed by the Appellate/Revising Authority delimitation District Judge Bagh dated 21.02.2022 alongwith proposal made by the delimitation officer with respect to inclusion of ward lower Gallan into Municipal Corporation Bagh instead of union council Chatter No.2 as well as notification dated 17.03.2022 and 18.03.2022 to the extent of inclusion of ward lower Gehlan into Municipal Corporation Bagh instead of union council Chatter No.2, as against law, rules, fact against the will and wish of the inhabitants of ward lower Gallan and the same may kindly be set aside/quashed. Restoring the ward lower Gallan as part of union council chatter No.2 in light of earlier decision/ directive and wish & will of the public belonging to ward in question.”

Precise facts of the case in hand as per petitioners are that the delimitation authority circulated new proposal for establishment and delimitation of wards and union council etc in all Azad Kashmir for upcoming election of local bodies, whereby through the said proposal the ward lower Gallan once again

proposed to be included in municipal Corporation Bagh, thus on circulation of said proposal the petitioners filed objection/appeal before Delimitation Authority Bagh. Comments were filed by delimitation officer. The learned District Judge/ Delimitation Authority, after hearing both parties, dismissed the appeal vide impugned order dated 21.02.2022. Later on during pendency of writ petition, notifications dated 17.03.2022 18.03.2022 were issued accordingly. It is prayed that the impugned order dated 21.02.2022 passed by Delimitation Authority Bagh as well as notifications issued on 17.03.2022 and 18.03.2022 are liable to be struck down as the same have been issued against the law and facts.

The learned counsel for the petitioners repeated the stance as taken in his pleadings and contended that according to law and rules local body Election rules 1983, the revenue village as well as patwar Halqa cannot be divided into pieces and even on the eventuality of most essentiality, the approval of government needed to be obtained but in the matter in hand the one part of revenue village as Lower Gallan has been separated included in municipal corporation Bagh and other part of revenue village has let remained with union council charter No.2 thus, act of authority is gross violation of law of the land, The learned counsel vehemently argued that the impugned

order dated 21.02.2022 as well as notification dated 18.03.2022 and 17.03.2022 are suffered from material illegalities, irregularities and based upon misreading and non-reading of record. He maintained that numbers of population prescribed for municipal committee as 3000 to 4000 and same should be taken in accounts to establish municipal corporation, whereas, population for municipal corporation has been fixed as 3500 to 5000 vide notifications dated 20.12.2021, therefore, in this aspect of the matter, the wards for municipal corporation have been established quite contrary to notification dated 20.12.2021 and the judgment of Hon'ble Apex Court of Azad Jammu & Kashmir dated 21.12.2021, so, whole structure built in this regard is run counter to the law and rules, therefore, the learned counsel prayed for acceptance of the writ petition by setting aside the impugned order as well as notifications.

The learned A.A.G supported the impugned order as well as notifications in all four corners and prayed for dismissal of the writ petition.

We have heard pro and contra arguments advanced by the learned counsel for the parties and perused the record with due care.

The petitioners herein prayed that the order passed by the Appellate Authority Bagh dated 21.02.2022 may be set-

aside alongwith the notifications dated 17.03.2022 and 18.02.2022.

A perusal of record shows that Lower Gehlan ward was included in Municipal Corporation Bagh in light of government notification dated 10.07.2012. The learned District Delimitation Authority while rendering impugned order dated 21.02.2022 clearly observed that the Delimitation Authority as well as Delimitation Committee Bagh have no jurisdiction to amend or delimit the area of Municipal Corporation Bagh.

As adumbrated above, the order passed by the Appellate Authority Bagh is completely inconsonance with law and matter no interference at all. Before parting with the decision, we may observe that as the ground realities quo geographically and geometrically ascertainment of the constituencies and factual ups and downs is a matter which requires completely acquaintance quo surroundings circumstances and gross root level inquiry which can be judged best by the officers of management, therefore, the relevant quarter are expected to mull over the matter by this angle in order to bestow the appellate power of Appellate Authority to the officers of Management by reshaping of certain provisions of election laws.

Nub of above discussion is that instant writ petition is meritless. No illegality or irregularity has been pointed out, therefore, the writ stands dismissed in limine and consigned to record accordingly.

Muzaffarabad,
07.07.2022.

-Sd-
Chief Justice

-Sd-
Judge

-Sd-
Judge