

ITEM NO.24+28

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).51/2023

HIRENDRANATH GOHAIN

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(WITH IA No. 10098/2023 - EX-PARTE STAY)

WITH

W.P.(C) No. 64/2023 (X)

(FOR ADMISSION and IA No.13522/2023-STAY APPLICATION)

W.P.(C) No. 717/2023 (X)

(FOR ADMISSION and I.R. and IA No.132472/2023-STAY APPLICATION)

W.P.(C) No.738/2023

(FOR ADMISSION and IA No.137776/2023-STAY APPLICATION)

Date : 24-07-2023 These petitions were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Fuzail Ahmad Ayyubi, AOR

Mr. K N Choudhury, Sr. Adv.
Mr. Manish Goswami, Adv.
Mr. C M Angadi, Adv.
Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s) Mr. Tushar Mehta, Solicitor General
Mr. K M Nataraj, A.S.G.
Mr. Kanu Agrawal, Adv.
Mr. Shailesh Madiyal, Adv.
Mr. Piyush Beriwal, Adv.
Mr. Vinayak Sharma, Adv.
Mr. Udai Khanna, Adv.
Mr. Pratyush Shrivastava, Adv.
Mr. Arvind Kumar Sharma, AOR

Mr. Maninder Singh, Sr. Adv.
Mr. Ankit Agarwal, AOR

Mr. Ranjit Kumar, Sr. Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Section 10A was inserted into the provisions of the Delimitation Act 2002¹ by Act 9 of 2008. The statute provides for the constitution of a Delimitation Commission and prescribes the modalities for its work. Section 10A provides that notwithstanding anything contained in Sections 4, 8 and 9, if the President is satisfied that a situation has arisen whereby the unity and integrity of India is threatened or there is a serious threat to the peace and public order, the delimitation exercise may be deferred in a State.

- 2 Section 8A of the Representation of the People Act 1950² contains specific provisions for the delimitation of Parliamentary and Assembly Constituencies in the States of Arunachal Pradesh, Assam, Manipur and Nagaland. According to sub-section (1), if the President is satisfied that the situation and the conditions prevailing in the States of Arunachal Pradesh, Assam, Manipur and Nagaland are conducive for the conduct of delimitation exercise, the deferment order issued under Section 10A of the Delimitation Act in relation to that State may be rescinded so as to provide for the conduct of the delimitation exercise in the State by the Election Commission. Sub-section (2) and other cognate sub-sections of Section 8A contain the norms which are to be followed by the Election Commission in carrying out the delimitation exercise. The Election Commission has to be guided by the provisions of Section 9 of the Delimitation Act.

- 3 Section 8A of the RP Act was introduced by Act 10 of 2008 with effect from 16 April 2008.

1 “Delimitation Act”

2 “RP Act”

- 4 For the State of Assam, the President, by a notification dated 8 February 2008, exercised powers under Section 10A(1) of the Delimitation Act so as to defer the delimitation exercise on being satisfied that a situation had arisen whereby the unity and integrity of India was threatened or was likely to be threatened and that there was a serious threat to peace and public order.
- 5 On 28 February 2020, the Union Ministry of Law and Justice in the Legislative Department issued SO 903(E) recording that the President on being satisfied that the circumstances that led to the deferring of the delimitation exercise in the State of Assam have ceased to exist, rescinded the earlier notification dated 8 February 2008 so as to allow for the readjustment of the division of the State of Assam into territorial constituencies for holding elections to the State Legislative Assembly and the House of the People “in accordance with the provisions of the Delimitation Act 2002”.
- 6 Subsequently, on 27 December 2022, a press note was issued by the Election Commission of India. By the press note, the Election Commission has indicated that it was requested by the Union Ministry of Law and Justice to carry out the process of delimiting Parliamentary and Assembly Constituencies in the State of Assam. On 20 June 2023, a Gazette notification was issued by the Election Commission publishing a draft proposal for delimiting Assembly and Parliamentary Constituencies in the State of Assam, as provided in Section 8A of the RP Act.
- 7 There is *inter alia* a challenge to the constitutional validity of Section 8A of the RP Act apart from a challenge to the decision which was taken on 28 February 2020. The process which has been followed has also been called into question.
- 8 The challenge which has been urged on behalf of the petitioners by Mr Kapil Sibal, senior counsel, can be formulated as follows:

- (i) The process of delimiting constituencies under the Delimitation Act 2002 provides for the inclusion of political representatives since Members of Parliament or, as the case may be, the State Legislative Assembly form a part of the machinery envisaged for carrying out the process of delimitation. On the other hand, where an order for deferring the delimitation exercise is rescinded in exercise of power under Section 8A of the RP Act, the process of delimitation is entrusted to the Election Commission rather than the politically inclusive process which is envisaged in the Delimitation Act. The dilution of the role of the political process in the delimitation exercise which is carried out pursuant to the provisions of Section 8A of the RP Act would violate cardinal principles of democracy and, hence, the basic features of the Constitution;
- (ii) The power under Section 8A of the RP Act to rescind a deferment notification is entrusted to the President. In the present case, the notification dated 28 February 2020, which is issued by the Union Ministry of Law and Justice, *albeit* in the name of the President, indicates that the delimitation was to be carried out in accordance with the provisions of the Delimitation Act 2002. The Election Commission has acted contrary to the terms on which the deferment of the delimitation exercise was rescinded on 28 February 2020; and
- (iii) Article 170(2) of the Constitution 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 shall, so far as practicable, be the same throughout the State. Similar provisions are embodied in Article 81(2). In the present case, the draft proposal which has been published by the Election Commission proceeds on the density of the population and, in doing so, breaches the

constitutional norms which are prescribed in the above provisions.

9 The constitutional challenge which has been addressed before the Court would merit scrutiny.

10 Hence, notice shall issue.

11 Counter affidavits shall be filed within a period of three weeks. The rejoinder shall be filed within a period of two weeks thereafter.

12 The process of delimitation has commenced following the decision to rescind the deferment of the delimitation exercise for the State of Assam on 28 February 2020. Section 8A of the RP Act makes a special provision for four States, namely, the States of Arunachal Pradesh, Assam, Manipur and Nagaland. For these four States, upon the rescission of the deferment order, the conduct of the delimitation exercise is entrusted to the Election Commission. The provisions of Section 8A contain detailed specifications in regard to the manner in which the Election Commission is to carry out the delimitation exercise.

13 The process has commenced following the notification dated 28 February 2020. The draft proposal has been published on 20 June 2023. It would not be appropriate to interdict the process at this stage. Hence, while reserving the constitutional challenge which has been addressed before the Court for further deliberation, we do not interdict the Election Commission from taking further steps.

14 List the Petitions in the first week of October 2023.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(RENU BALA GAMBHIR)
COURT MASTER