

(2022) 12 J&K CK 0045

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 155, 1098 Of 2015, Civil Miscellaneous No. 9506 Of 2019, 215 Of 2020, IA No. 203, 364 Of 2015, CPOWP No. 198 Of 2015

Chaman Lal And Ors

APPELLANT

Vs

State Of J&K & Ors

RESPONDENT

Date of Decision : 14-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Land Revenue Act, Svt 1996 — Section 5

Citation : (2022) 12 J&K CK 0045

Hon'ble Judges : Rahul Bharti, J

Bench : Single Bench

Advocate : Anuj Dewan Raina, S.S. Nanda, Raghubir Singh

Final Decision : Dismissed/Disposed Of

Judgement

Rahul Bharti, J

1. Heard learned counsel for the parties.
2. A public law remedy under article 226 of the Constitution of India is not meant to be used as a catalyst to seek and serve the political expectations and interests of person or group of persons in relation to an administrative/statutory act and decision taken on the part of the public authorities. A writ Court is not equipped with any expertise to examine the expediency of a decision of creation of a tehsil or district through the lens of competing and contrary expectations of inhabitants of the areas suffering inclusion and exclusion qua a new tehsil.
3. Writ petitions-OWP no. 155/2015 and OWP no. 1098/2015 are taken together for adjudication as in both the writ petitions the subjectdispute is same though the respective petitioners in the two writ petitions are claiming reliefs counter to each others' position set up in the respective writ petitions.
4. Writ petition-OWP no. 155/2015 is by six petitioners who approached this

Court bearing their status as Sarpanch of their respective panchayats falling in tehsil Nowshera district Rajouri. The petitioners in their writ petition set up the cause in a representative capacity.

5. Tehsil Nowshera, district Rajouri came to suffer alteration for creation of new tehsil out of its original territorial extent. The then bout of the State of Jammu and Kashmir came to exercise its power under section 5 of the Land Revenue Act Svt. 1996 for altering the number of sub-divisions, tehsils and niabats by creating new sub-divisions, tehsils and niabats in and of the district Rajouri and for this purpose SRO 448 dated 21.10.2014 came to be promulgated.

6. New tehsil which came to be carved out of the existing tehsil Nowshera is tehsil Beri Pattan and the headquarter (HQ) of the said new tehsil was also declared to be at Beri Pattan. In creation of this new tehsil of Beri Pattan, some panchayats came to be included and some panchayats remained excluded to stay in tehsil Nowshera which suffered bifurcation.

7. The petitioners in OWP no. 1098/2015 came forward with a grievance that panchayats of Mangal Dei, Deeing and Gagrote ought not to have been excluded from being included in new tehsil Beri Pattan and whereas villages namely Kuldabbi, Talla Tanda, Nah, Patni and Dhar should not have been included in new tehsil Beri Pattan which otherwise were falling in tehsil Sunderbani. In addition to this, the grievance of the petitioners was also with respect to the fact that the headquarter (HQ) of tehsil Beri Pattan was not getting established and operational at tehsil Beri Pattan. For their alleged grievance, the petitioners referred the fact of exclusion of panchayat halqas of Mangal Dei, Deeing and Gagrote from being included in tehsil Beri Pattan to be an act actuated with malice both in law and facts and detrimental to the public interest and the inclusion of the villages at Sunderbani in tehsil Beri Pattan as misconceived.

8. In the preorganized tehsil Nowshera, area of Beri Pattan was falling in Panchayat Halqa Mangot. The exclusion of the aforementioned panchayat halqa from being included in Beri Pattan and inclusion of the aforementioned villages in new tehsil Beri Pattan was referred as an act without proper application of mind on the part of the respondents.

9. The petitioners reckoned that panchayat halqas namely Mangal Dei, Deeing and Gagrote, distance wise, are closer to tehsil Beri Pattan and as such warranted their inclusion in the said tehsil whereas, the villages Kuldabbi, Talla Tanda, Nah, Pattni and Dhar are far away from tehsil Beri Pattan and should have remained with tehsil Sunderbani.

10. The writ petitioners in OWP no. 1098/2015 are two in number and they belong to village Kangri which came to fall in new tehsil Beri Pattan. In their writ petition, the petitioners came forward bearing the representative capacity on behalf of the residents of twelve villages falling under tehsil Sunderbani and their grievance was two fold that is SRO 448 dated 21.10.2014 was not being made operational by creating the set up for new tehsil Beri Pattan and for the location

of the headquarter nearer to Sunderbani than towards Nowshera. The petitioners in this case referred to the fact that re-organization of tehsil Sunderbani was necessitated to distribute the workload of original tehsil Sunderbani so as to serve public convenience of villages namely Kangri, Changi Kangrial, Chak Nowabad, Chak Tawela, Meenka, Thickka, Kuldabbi, Talla Tanda, Nah, Patni, Dhar and Dhok Banyar. The petitioners in this writ petition meant to block the petitioners in OWP no. 155/2015 in terms of their claim for inclusion of villages namely Mangal Dei, Deeing and Gagrote in tehsil Beri Pattan.

11. The long and short of the factual narrative of the aforesaid two writ petitions is that the petitioners are trying to self-judge the validity and propriety of the action on the part of the Government in carving out new tehsil Beri Pattan by inclusion of areas from originally existing tehsil Nowshera and tehsil Sunderbani of district Rajouri. Whether the petitioners can have the basis, even if they have the locus to agitate, to come up with writ petitions for seeking re-writing of the creation of a tehsil in terms of inclusion of areas therein and exclusion of areas therefrom and also for location of its headquarters, it requires very sound factual details which are compelling in its very appeal for a Court to read absurdity and non-application of mind on the part of the Government in exercise of its decision to carve out a tehsil out of an existing tehsil under the Land Revenue Act, Svt. 1996.

12. In the present case, after eruption of controversies through the medium of the present two writ petitions, a Committee came to be constituted by the Deputy Commissioner, Rajouri vide an Order no. SQ/1093-1100 dated 02.09.2015 in deference to a direction in an order dated 18.02.2015 of this Court. The Committee so set up came to undertake visits of the areas and took into consideration the ground position in the backdrop of the fact that newly created tehsil Beri Pattan was allocated 15 villages under it out of which twelve villages were drawn from the original tehsil Sunderbani and three villages from the original tehsil Nowshera. With respect to the location of the headquarter, the actual tussle was between the villages drawn from tehsil Sunderbani and the villages drawn from tehsil Nowshera.

13. The Committee comprising of Assistant Commissioner (Revenue) Rajouri, Sub Divisional Magistrates of Nowshera and Sunderbani and Tehsildars of Beri Pattan and Nowshera headed by the Additional Deputy Commissioner, Rajouri came to make a report no. SQ/1210 dated 14.09.2015 thereby recommending that it will be appropriate in case tehsil Beri Pattan is made functional and operational with its headquarter at village Kangri near Thickha Road Crossing which being a central place of almost all the villages incorporated in the new tehsil Beri Pattan.

14. Considering the facts and circumstances of the case, this Court has been able to make sense of the two writ petitions that it is more political in intent and content rather than legal in its content and context and as such this Court has to act with prudence and caution not to intrude into a territory which is reserved

purely for the Executive i.e the Government of the day which at the relevant point of time was that of the then State of Jammu and Kashmir in the matter of alteration and addition of existing tehsils/districts. A line to line reading of both the writ petitions make no sense as to which fundamental right/s of the petitioners or for that matter of the residents of the villages in the name of whom the petitioners stepped forward donning the robe of being the representatives, were alleged to be violated and compromised. In none of the two writ petitions, this Court could lay its hand to any representation, firstly made by the petitioner to the then Govt. of Jammu and Kashmir and its authorities concerned for seeking review of its decision in the context of inclusion and exclusion of the villages qua newly created tehsil Beri Pattan. Even if there is any such representation, the same carries no factual basis except generalized plea for the inclusion and exclusion of named villages from newly created tehsil Beri Pattan and as such, this Court finds that the cause of action for the petitioners in both the writ petitions was more of an illusion of a cause of action rather than real cause of action for laying of the said two writ petitions. In fact, the said writ petitions cancel each other and that is where this Court has to be on its guard to let the Government, being the final arbiter in the matter and for that the Committee set up by the Deputy Commissioner, Rajouri, carried out its duty and as such this Court has no basis to disturb the Committee's report and also that of the SRO 448 dated 21.10.2014 to any extent and for any purpose.

15. Be that as it may be, both the writ petitions are thus found merit less and dismissed accordingly along with connected applications.

CPOWP No. 198/2015

In view of the fact that the main petitions have been dismissed, the instant contempt petition is rendered infructuous.

Disposed of accordingly.