

(1992) 07 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 660 of 1991

Govind Singh Machhan and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Himachal Pradesh Gram Panchayat Rules, 1971 — Rule 3, 5, 6
Himachal Pradesh Municipal Act, 1968 — Section 256
Himachal Pradesh Panchayati Raj (Amendment) Act, 1987 — Section 2, 3, 4(1)
Himachal Pradesh Panchayati Raj Act, 1968 — Section 10(1), 10(2), 139(4), 154, 155
Punjab Municipal Act, 1911 — Section 238, 238(1)

Citation : (1993) 2 ShimLC 400

Hon'ble Judges : V.K. Mehrotra, Acting C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Indar Singh, in C.W.P. Nos. 578, 639, 646 and 660 of 1991, Ashok Sharma, in C.W.P. No. 558 of 1991, S.S. Kanwar, in C.W.P. Nos. 564 and 642 of 1991, D.C. Jishtu, in C.W.P. No. 640 of 1991, M.L. Sharma, in C.W.P. No. 694 of 1991 and H.R. Bhardwaj, in C.W.P. Nos. 759 and 790 of 1991, for the Appellant; K.S. Patyal, A.A.G. in C.W.P. Nos. 558 and 639 of 1991, in C.W.P. Nos. 564, 578, 640, 642, 646, 660, 694, of 1991 and for the first three Respondents in C.W.P. Nos. 759 and 790 of 1991, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mehrotra, A.C.J.

1. The challenge in this bunch of writ petitions under Article 226 of the Constitution is to the notifications issued by the State Government in exercise of the powers under Sections 4 and 5 of the Himachal Pradesh Panchayati Raj Act, 1968 (for short, "the Act").

Section 4 says:

4(1) The Government may, by notification or otherwise, declare any village or

group of contiguous villages with a population of not less than one thousand and not more than five thousand to constitute one or more Sabha areas:

Provided that neither the whole nor any part of an area comprised in a municipal corporation, a municipal committee, a notified area committee or a cantonment board shall be included in a Sabha area:

Provided further that the Government may, in any particular case, relax these limits.

(2) The Government may, by notification or otherwise, include any area in, or exclude any area from the Sabha area.

(3) If the whole of the Sabha area is included in a municipal corporation, a municipal committee, a notified area committee or a cantonment board, the Sabha shall cease to exist and its assets and liabilities shall be disposed of in the manner prescribed..."

In the Himachal Pradesh Panchayati Raj Manual, Part I, printed by the Controller, Printing and Stationery Department, Himachal Pradesh, Shim la, is shown Sub-section (4) of Section 4 in the following words:

Continuance of certain Gram Sabhas (Section 3 of Act No. 13 of 1987).

(4) Notwithstanding anything contained in Section 2 of this Act, such Sabha areas which were constituted under the principal Act and were in existence immediately before the commencement of this Act shall continue to be validly constituted till these Sabha areas are reconstituted, within a period of three years from the commencement of this Act, by the State Government in accordance with the provisions of Sub-section (1) of Section 4 of the principal Act as amended by Section 2 of this Act.

2. We have quoted the provision in the form in which it has been printed in the Manual because one of the submissions made on behalf of the Petitioners by their Counsel is founded upon it.

Section 5 in its relevant part says:

5(1) The Government may, by notification or otherwise establish Gram Sabha by name in every Sabha area.

(2) Every Gram Sabha shall, by the name notified or established. under Sub-section (1), be a body corporate having perpetual succession and a common seal, and subject to any restriction by or under this Act or any other law, shall have power to acquire, hold, administer and transfer property, movable or immovable, and to enter into contracts, and shall by the said name sue or be sued and do all such things as are necessary for which it is constituted.

(3)...

3. Expression "village" has been defined in Section 3(I)(ff) to mean "any local

area, recorded as a revenue estate in the revenue records of the district in which it is situated or any other local area which the Government may, by general or special order, declare to be a village".

Section 3(1)(m) says:

(m) "Gram Sabha" or "Sabha" means a Gram Sabha established u/s 5 of this Act and "Sabha area" means an area declared to be a "Sabha area" u/s 4 of this Act.

4. The facts in the case of Govind Singh and Anr. v. State of H.P. and Anr. CWP No. 660 of 1991, which was argued as a leading case before us, may be noticed at this stage:

5. Gram Sabha Kutara in Tehsil Rohru in District Shimla was created in the year 1952. The notification issued by the State Government in regard to this Gram Sabha is of 23rd August, 1991 Its copy has been appended as Annexure-PA to the writ petition with its English translation as Annexure-PA/1. The English translation is as under:

GOVERNMENT OF HIMACHAL PRADESH PANCHAYAT RAJ DEPARTMENT

No. PCH-H A (4)-56/76-9, dated Shimla-2, 23rd August, 1991

NOTIFICATION

All the previous notifications issued by this department for the creation and bifurcation of following villages of Distt Shimla, the same have been cancelled and the Governor of H.P. has been pleased to create the following Gram Sabha under the powers vested in him under the H.P. Panchayati Raj Act, 1968, under Sections 4 and 5 of the Act:

No. Development Block and name of present Gram Sabha Name of village shown in col. No. 2 Name of villages which have been bifurcated from col. 2 Name of Gram Sabha from the bif. of villages and H.Q. Name of villages included in Sabha of Col. No. 5 Remarks

1 2 3 4 5 6 7

3. Developmeot Block Robru

1. Kutara 1. Bharetli 1. Bharetil 1. Dalgaon 1. Bharetli Due to

2. Dalgaon 2. Dalgaon

2. Dalgaon exclusion

3. Khaskandi 3. Khaskandi

3. Khaskandi of villages

4. Bhavnala 4. Bhavnala

4. Bhavnala of Kutara

5. Kutara 5. Kutara 2. Gauna 1. Kutara the entity of

6. Buthara 6. Buthara

2. Buthara present

7. Gauna 7. Gauna

3. Gauna Gram sabha will be

8. Khodsu 8. Khodsu

4. Khodsu finished.

By Order, Sd/- Secretary (Panchayati Raj) Government of Himachal Pradesh.

5. The case of the Petitioners, who are residents of the area comprised in Gram Sabha Kutara, is that the consequence of this notification is that Gram Sabha Kutara has been abolished and has ceased to exist. In its place two new Gram Sabhas "Dalgaon" and "Gauna", each consisting of some villages earlier comprised in Gram Sabha Kutara have come into existence. The abolition of Gram Sabha Kutara was without any notice to the people of the area and was even, otherwise, invalid in law as no reconstitution could be effected by the Government after expiry of a period of three years from the commencement of the Himachal Pradesh Panchayati Raj (Amendment) Act, 1987 (13 of 1987) which came into effect on its publication in the H.P. Gazette (Extraordinary, dated 8th May, 1987). The action was politically motivated and was arbitrary in nature.

6. In the Return filed on behalf of the State of Himachal Pradesh it has been disclosed that the impugned notification has been issued keeping in view the request of the residents of the area as conveyed to the Government through letter of the Block Development Officer concerned dated 26th July, 1988 addressed to the Deputy Commissioner, Shimla, in which it was mentioned that Gram Sabha/Gram Panchayat Kutara had resolved on 1st June, 1988 that the Gram Sabha concerned was very large and the overall development of the area was being hindered due to party faction and difference in opinion so that a separate Gram Sabha Dalgaon should be constituted. It has also been said that the notification had been issued keeping in view the recommendations made by the Deputy Commissioner and the Block Development Officer in favour of the bifurcation and having regard to the five principles laid down by this Court in its order dated 20th August, 1984 in the case of Jamit Singh and Ors. v. State of Himachal Pradesh and Anr. C.W.P. No. 268 of 1984, decided on 6th May, 1985. The principles to be kept in mind by the State, according to that judgment, while reconstituting Gram Sabha areas were:

(i) administrative integrality;

(ii) financial viability;

(iii) geographical contiguity;

- (iv) historical background; and
- (v) public convenience.

7. Before its amendment by the Amending Act (13 of 1987), the Act contemplated in Section 4(1) Constitution of a Gram Sabha area with a village or group of contiguous villages having a population of not less than 500. Later, it was felt that the limit of population for constituting a Gram Sabha should be revised to make it a viable unit due to the increase in population. On 25th March, 1987 a bill was introduced in the H.P. Legislature for effecting various amendments in the Act. The Statement of Objects and Reasons of the bill (published in the H.P Gazette (Extraordinary) dated 28th March, 1987 at page 585) mention? in its opening part that:

Increase in population demands that the existing limit of population to constitute a Gram Sabha should be revised to make it a viable unit. With this end in view, the existing minimum population limit is being raised from 500 to 1000.

8. Amending Act 13 of 1987 has 25 Sections which bring about amendment in many provisions of the principal Act. It was published in the Himachal Pradesh Gazette (Extraordinary) dated 8th May, 1987. The first three Sections, which alone are relevant for our purpose, are these:

1. (1) This Act may be called the Himachal Pradesh Panchayati Raj (Amendment) Act, 1987.

(2) It shall come into force at once.

2. For the existing Section 4 of the Himachal Pradesh Panchayati Raj Act, 1968 (hereinafter called the principal Act) the following Section 4 shall be substituted, namely:

(Section 4 quoted in the earlier part of this judgment).

3. Notwithstanding anything contained in Section 2 of this Act, such Sabha areas which were constituted under the principal Act and were in existence immediately before the commencement of this Act shall continue to be validly constituted till these Sabha areas are reconstituted, within a period of three years from the commencement of this Act, by the State Government in accordance with the provisions of Sub-section (1) of Section 4 of the principal Act as amended by Section 2 of this Act.

"Three year limit"

9. It is this Section 3 which has found place as Sub-section (4) of Section 4 in the H.P. Panchayati Raj Manual, Printed by the Controller, Printing and Stationery Department, Himachal Pradesh, Shimla.

10. Read in this context it is obvious that the so called Sub-section (4) which, In reality, Is only a part of the Amending Act and not of the principal Act as such, is a provision transitory in nature It only provides for reconstitution of such of the

Gram Sabha areas, after the enactment of the Amending Act, which earlier had been constituted with a minimum population of 500 and also provides for its continuance irrespective of the fact that the minimum population therein was less than 1000, which would otherwise have become contrary to the amended provision contained in Section 4(1). The period of three years envisaged in Section 3 of the Amending Act was only to give time to the State Government to bring the Constitution of those Sabha areas in accordance with the amended provision.

11. The emphasis on behalf of the Petitioners that no reconstitution of the Sabha area was possible after expiry of three years from the commencement of the Amending Act is misplaced. Firstly, a plain reading of the so called Sub-section (4) of Section 4 would show that the recitals contained therein are wholly unrelated to the principal Act. As such, they rule out the plea that they constitute a part of Section 4 as such. Secondly, if they were to be read as a part of Section 4, as canvassed on behalf of the Petitioners, the provision of Section 4(2) enabling the Government, by notification or otherwise, to include any area in or exclude any area from the Sabha would be rendered otiose. It is not permissible to read a statute in this manner, for, redundancy cannot be attributed to the Legislature. Properly read, it is obvious that Section 3 of the Amending Act, though printed as Sub-section (4) of Section 4 in the H.P. Panchayati Raj Manual, is a provision confined to the Amending Act and does not affect the power of the State Government u/s 4(2) to include or exclude any area from a Sabha area from time to time.

"Scope of Section 4(2)"

12. What then is the scope of the power of the State Government u/s 4(2).

13. The first proviso to Section 4(1) read with Section 4(3) clearly suggests that no part of any area comprised in a municipal corporation, municipal committee, notified area committee or a cantonment board can be included by the State Government in a Sabha area constituted by it u/s 4(1) and that where the entire Sabha area constituted earlier gets included in the area of a municipal corporation or committee, or a notified area committee or a cantonment board, the Sabha shall cease to exist and its assets and liabilities shall be disposed of in the manner prescribed. The manner has been prescribed in Rule 3 of the H.P. Gram Panchayat Rules, 1971 which says that in that eventuality all rights, obligations, property, assets and liabilities shall vest in the body in which the whole area is included.

The scheme of Section 4 is clear Total obliteration of the Sabha area is envisaged only where it is included in a municipal corporation or a committee or a notified area committee or a cantonment board It is not envisaged by exercise of executive powers in any other eventuality.

14. A look at Section 4(2) also leads to the same conclusion. Any area may be included or excluded from the Sabha area by the State Government by

notification or otherwise. This does not envisage the inclusion in or exclusion from the area in such a manner as to bring about complete obliteration of a pre-existing Sabha area.

15. The decision of R.S. Pathak, C.J. in the Danda Annj Gram Sabha etc. v. The State of Himachal Pradesh ILR 1973 HP 390 cannot be read to mean anything else. In that case a notification had been issued by the State Government in exercise of the powers u/s 4(1) and Section 5(1) to take away all the villages from the Danda Annj Sabha area. Thus Danda Annj Sabha area was left without a Sabha area. What the learned Judge has observed (in paragraph 3 of the judgment) is:

...There is nothing in the notification to indicate that the Danda Annj Gram Sabha has been abolished. Although the notification purports to have been made u/s 5(1) also, no order has been made therein affecting the establishment of the Danda Annj Gram Sabha. It is concerned only with Sabha areas. A Gram Sabha is a body corporate having perpetual succession, and continues to exist in law. The mere removal of the Sabha area in respect of the Gram Sabha does not thereby put an end to the Gram Sabha Assuming the Government has power to abolish the Danda Annj Gram Sabha, it can only do so by a specific order to that effect The notification of 5th August, 1972, does not do so. Accordingly, the case is one where the Danda Annj Gram Sabha remains established but there is no Sabha area over which it has jurisdiction. That, in my opinion, is opposed to the necessary intention of the Act. If the Government intended to remove the entire Sabha area from the jurisdiction of the Danda Annj Gram Sabha, it could have done so only by first abolishing the Gram Sabha itself and thereafter putting an end to the constituted Sabha area....

16. These observations, properly understood, would mean that it is only where the Gram Sabha itself comes to be abolished in accordance with law that the entire Sabha thereof can be taken away.

17. The notification of 23rd August, 1991 mentions in the remarks column that:

...due to exclusion of villages of Kutara, the entity of present Gram Sabha will be finished....

This recital, according to the learned Additional Advocate General, brings about an end to Gram Sabha Kutara in accordance with law and in consonance with the view in Danda Annj Gram Sabha.

18. Section 5(1) enables the State Government to establish a Gram Sabha, by name, in every Sabha area Upon such establishment it becomes a body corporate having perpetual succession and a common seal and a juristic person u/s 5(2).

19. Section 21 of the General Clauses Act, 1897 says that:

Where, by any Central Act or Regulation, a power to issue notification, Orders,

Rules, or by-laws is conferred, then that power, includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

Relying on this provision it was urged on behalf of the State that, Inasmuch as, Gram Sabha Kutara had been brought into existence by issuance of a notification in exercise of powers u/s 5(1). its existence could be brought to an end through a notification, as has been done in the instant case This is what, in effect, says the Addl. Advocate General, been said in Danda Annj Gram Sabha.

20. The submission overlooks that Section 21 of the General Clauses Act, 1897 embodies only a rule of construction. And. the nature and extent of its application must be governed by the relevant statute which confers the power to Issue the notification Gopi Chand Vs. The Delhi Administration, ; Lachmi Narain and Others Vs. Union of India (UOI) and Others, .

21. We have seen that Section 4(3) envisages that the Gram Sabha would cease to exist if the whole of the Sabha area is included in a municipal corporation or committee or a notified area committee or a cantonment board. The consequences upon the assets and liabilities of the Sabha upon such cesser are provided for. The legislative intent appears clear. The existence of the Sabha is not to be brought to an end by executive action in any other situation. The Sabha cannot exist without a Sabha area. Depriving a Sabha of its entire Sabha area, otherwise than in the manner provided in Section 4(3). confined to inclusion In a municipal corporation etc, is an indirect method of bringing to an end the Sabha which could not be achieved by issuance of a notification in exercise of executive power by the State Government. We find in the same Act that in respect of other bodies-like the Panchayat Samiti and Zila Parishad-a specific provision is contained in Sections 154 and 155 for their supersession and reconstitution by the State Government by issuance of a notification These bodies, under Sections 61(2) and 139(4) are also contemplated to be bodies corporate having perpetual succession and a juristic entity like the Gram Sabha. No similar provision is contained in the Act, as far as supersession and reconstitution is concerned, for a Gram Sabha.

22. The Gram Sabha is a body corporate having perpetual succession and continuance. Its existence as a juristic entity cannot be brought to an end by executive action in the absence of a power conferred upon the State to do so under the provisions of the Act. We find it difficult to share the view of Pathak, C.J. in Danda Annj Gram Sabha if it lays down that the entity of a Gram Sabha can be brought to an end by issuance of a notification to that effect u/s 5(1) Such a view, we feel, ignores the scheme of the Act. We may recall what the Supreme Court observed about Section 21 of the General Clauses Act in The State of Bihar Vs. D.N. Ganguly and Others, (in paragraph 9). It said:

...It is well settled that this section embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would

depend on the subject-matter, context, and the effect, of the relevant provisions of the said statute. In other words it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of the Rule of construction enunciated by Section 21, the Appellant's contention is justified that the power to cancel the reference made u/s 10(1) can be said to vest in the appropriate government by necessary implication. If we come to the conclusion that the context and effect of the relevant provisions is repugnant to the application of the said Rule of construction, the Appellant would not be entitled to invoke the assistance of the said section....

23. The writ petitions in which the very existence of a pre-existing Gram Sabha has been brought to an end by the notification assailed therein, would merit success on this short ground but, inasmuch as, some other submissions have been made which may have to be considered in respect of the writ petitions in which a Gram Sabha has been deprived of some part of its Sabha area, we proceed to notice them now.

"Hearing"

24. The Petitioners urge, with some emphasis, that an opportunity of hearing should have been afforded by the State to those affected by the impugned notifications before excluding any area from the Sabha area on principles of natural justice. Since such an opportunity was not given, say the Petitioners, the action of the State Government deserves to be set aside.

25. We have read the provisions of Section 4. They do not envisage opportunity being given to any one before including in or excluding an area from the Sabha area. The absence of an express provision may, possibly, have no effect on the right of hearing, particularly to the Gram Sabha which is being deprived of some part of its Sabha area. We may refer to the observations of the Supreme Court in *Baldev Singh and Others Vs. State of Himachal Pradesh and Others*, where the view taken was that while constituting an area into a notified area u/s 256 of the Himachal Pradesh Municipal Act, (19 of 1968) people of the locality did have the right of being afforded an opportunity of being heard before the administrative decision was taken by the State. What the Supreme Court said (in paragraph 5) was that:

...it is a fact that the Orissa Act provides in clear terms a right of hearing whereas Section 256 of the Himachal Act makes no such provision but the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically Rules out the application of natural justice, the Rules of natural justice would apply. We accept the submission on behalf of the Appellants that before the notified area was constituted in terms of Section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard.....Denial of such opportunity is not in consonance with the scheme of the Rule of law governing our society. We

must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way....

26. The Gram Sabha, as envisaged under the Act, is a body corporate having perpetual succession and has power to acquire, hold, administer and transfer property, movable or immovable, and to enter into contracts and is to do all such things as are necessary for which it is constituted. The addition to the Sabha area or the exclusion thereof may affect it in the matter of assets and liabilities. The Rules of natural justice would, therefore, require that the Gram Sabha should have an opportunity of presenting its point of view in respect of proposed action of the State Government to add to or diminish or substitute any part of the Sabha area belonging to it.

27. Learned Addl. Advocate General sought assistance from the decision of R.S Pathak, C.J, as he then was, in *Surat Ram etc. v. State of Himachal Pradesh* ILR 1974 HP 564 for his submission that no opportunity was envisaged in a case where the State Government reconstitutes one Gram Sabha into more Sabhas in exercise of powers u/s 4(1), albeit, by exclusion of some areas from a pre-existing Sabha area or addition of some Sabha area to Anr. Gram Sabha In that decision original Gram Sabha Mandhol was replaced by three new Gram Sabhas Mandhol, Nakrari and Kot The learned Judge noticed the submission made before him that the manner in which the three new Gram sabhas had been drawn up would produce great social and economic injustice to the inhabitants of the Sabha area but said that it was for the Government to judge whether the Constitution of the Sabha area was such as would benefit the inhabitants of the Sabha area and not for the Court exercising jurisdiction under Article 226 of the Constitution. He also observed that it may be open to the inhabitants to represent about Constitution of a Sabha area but not to the Court.

28. A perusal of the decision shows that the question about opportunity being given by the State Government to the inhabitants of the area before bringing about the reconstitution of the Gram Sabha was not raised before the Court. Besides, the decision of the Supreme Court in *Baldev Singh and Ors.*, to which R.S. Pathak, C.J , himself was a party, rules out acceptance of the submission that opportunity to the person likely to be affected by the action of the State Government was not contemplated before the action was actually taken by the State Government.

29. The decision of the Supreme Court in *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, wherein the power of the State Government to declare any town, village, suburb, bazar or inhabited place to be a town area for the purpose of U.P. Town Area Act, 1914 u/s 3 was held to be legislative in character, can hardly be of assistance to the Respondent-State. What was said by the Supreme Court (in paragraph 8) was that:

..The power of the State Government to make a declaration u/s 3 of the Act is legislative in character because the application of the rest of the provisions of the

Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation...

Later, the Court held (in paragraph 10) that:

the maxim "*audi alteram partem*" does not become applicable to the case by necessary implication.

The case turned upon the construction of the nature of the power which was exercisable by the State Government u/s 3 of the U.P. Act. The Supreme Court felt that the plea that the State Government should give previous publicity to its proposal to declare any area as a town area and should make such declaration after taking into consideration any representation or objections filed in that behalf by the members of the public proceeded upon an incorrect assumption that the duty imposed upon the State Government u/s 3 was in the nature of an administrative power in the exercise of which the State Government was to follow the principles of natural justice.

30. In the petitions before us the provisions of any Act are not being extended to any area. The cases relate to dismemberment of preexisting Gram Sabhas which may have consequence upon their assets and liabilities. The power which the State Government can exercise u/s 4 of the Act cannot be treated to be legislative in character. It is in nature an administrative power.

31. The opportunity which is envisaged for a Gram Sabha, before power is exercised by the State Government in respect thereof u/s 4(2), is only of the nature that the facts which the State Government is to take into account for its action should be known to the Gram Sabha. The Rule of natural justice, in the context of the scheme of Section 4, would not require anything more. We say so for the reason, firstly, that the inclusion or exclusion of any area from the Gram Sabha area is to be guided by the condition that there should be contiguity of villages and a population of not less than 1000 and not more than 5000 to constitute a Sabha area; and, secondly, that no qualitative change in the nature of the Gram Sabha is to result from the inclusion or exclusion of any area from its Sabha area. We are in respectful agreement with R.S. Pathak, C.J., when he says in *Jai Singh v. State of H.P. etc.* ILR 1976 HP 58 that:

...Any change in the Gram Sabha area over which the existing Gram Sabha has jurisdiction does not affect the Constitution of the Gram Sabha itself. Section 5 of the Himachal Pradesh Panchayati Raj Act, 1968 contemplates a Gram Sabha as a body corporate having perpetual succession and a common seal. Merely because the extent of the Sabha area over which the Gram Sabha has jurisdiction is altered u/s 4 does not mean that the Gram Sabha in its nature is affected in any way.

32. We may refer to the decision of the Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, at this stage. In that case the New Delhi Municipal Committee had been superseded, before the expiry of its term, by the Lt.

Governor of the Union Territory of Delhi in exercise of the powers conferred by Section 238(1) of the Punjab Municipal Act, 1911, as applicable to New Delhi This was done without any opportunity being provided to the Committee before passing the order of supersession. The plea taken was that such an opportunity was available to the Committee as the Rule of "audi alteram partem" was attracted. The plea was upheld by the Supreme Court.

33. u/s 238(1) a Committee could be superseded where it was found to have become incompetent to perform or persistently make default in the performance of the duties imposed on it by or under the Act or any other provision of law or was found to have exceeded or abused its powers. The Supreme Court was of opinion that for an action u/s 238 it was necessary that before an order was passed the Committee should have been made aware that it was being required to meet the allegations which could lead to a certain action being taken against it. Further, that non observance of natural justice itself amounted to prejudice and the proof of prejudice independently of proof of denial of natural justice was not necessary.

34. The Petitioners lean heavily upon the decision in S.L. Kapoor for their plea that a notice should independently have gone to the Gram Sabha concerned informing it that some area was to be added to or excluded from the Sabha area relating to it before a notification to that effect was issued We feel that the submission in this respect over-looks that unlike the case before the Supreme Court in S.L. Kapoor, the action of inclusion or exclusion of some area in the Sabha area is not contemplated to be made for some fault, capable of explanation, nor would result in a consequence like supersession of the Municipal Committee wherein the Committee is deprived of its powers and duties which stand transferred to Anr. functionary. Consequences in the two situations are entirely different from each other.

35. The principles of natural justice are not to degenerate into a set of hard and fast Rules. There should be: "circumstantial flexibility" in them. (Lord Reid in *Wiseman v. Borneman* 1971 AC 297) (as quoted with approval in *Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc.,*

36. In *Union Carbide* the submission before the Supreme Court was that notice and opportunity of hearing to the victims, whom the Union of India claimed to represent were imperative before the proposed settlement was recorded and those, admittedly, not having been done, the earlier orders of 14 and 15 February, 1989 were nullity as they were made in violation of the Rules of natural justice. The Supreme Court did not accept it in the circumstances of the case and applied the test of "circumstantial flexibility". We feel that the same flexibility is called for in these cases and the absence of a formal notice to the various Gram Sabhas, before including or excluding an area in their Sabha area, would not, by itself, vitiate the action of the State Government. Where, on facts, it is found that the view point of the Gram Sabha was available to the State Government, mere omission of a specific opportunity of hearing or notice of the proposed action to it

will not vitiate its action. We will advert to this aspect again when we examine the facts of the various petitions individually.

"Legitimate Expectation"

37. One of the submissions made on behalf of the Petitioners before us was that the legitimate expectation of a Gram Sabha about the physical integrity of its Sabha area could not be taken away except by a legislative action. What was urged was that legitimate expectation was a right which could not be taken away by executive action. Reliance was placed in this respect upon the decision of the Supreme Court in *State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others*, In that case the term of office of Respondent Mahajan as a member and Chairman of the H.P. State Electricity Board had been curtailed by providing a maximum age for the incumbent to continue as such. What was urged was that the legitimate expectation of Mahajan to continue for the period for which he had been given extension, beyond the prescribed age of 65 years, had come to be interfered with. The Supreme Court said (in paragraph 81) that in the matter of tenure of appointment whether legitimate expectation can be pleaded is a moot point. It also said that legitimate expectation could not preclude legislation. The Supreme Court was not called upon nor did it go into the question whether the legitimate expectation could be brought to an end by exercise of administrative power under an enabling statutory provision.

38. In the present case the argument seems to be misconceived. Section 4(2), in terms, enables the State Government to include any area in or exclude any area from the Sabha area by notification or otherwise. The power is clearly administrative in nature and is exercisable by the State Government within statutory limitations. No plea of legitimate expectation regarding integrity of the Sabha area can be held to arise in these cases calling for a legislative action for its curtailment.

"Gerrymandering"

39. Another submission, equally untenable, made on behalf of the Petitioners was that the various notifications under challenge in these petitions were invalid as the State Government had resorted to the principle of "gerrymandering" in their issuance, which was not permissible, as was held by the Supreme Court in *the State of Madhya Pradesh and Others Vs. Devilal*, .

40. The facts in *Devilal* were that in exercise of powers under the M.P. Panchayats Act (7 of 1962) the State Government divided Mandsaur District into eight blocks with Manasa Block as one of them where a Janapada Panchayat was to be established. By notification of 26th September, 1969 this block was divided into twenty constituencies from which the representatives of the Janapada Panchayat, Manasa were to be elected. Elections to the Gram Panchayats in the block were held after the constituencies were notified and after their completion on 8 November, 1970 they were duly notified by the Collector on 14 November, 1970. The new Gram Panchayats assumed office on the same day but on 25

November, 1970 the State Government published a notification of redistribution of the constituencies of the block and on 29th November, 1970 the Collector also issued a notification reallocating the reserved seats for the Scheduled Castes and Scheduled Tribes. A petition under Article 226 of the Constitution was filed by Respondent Devilal, who had been elected as Sarpanch of a Gram Sabha and was qualified to contest the election of President and Vice-President of Janapada Panchayat, Manasa, assailing the validity of the notifications of the State Government and the Collector regarding reallocation of the reserved seats. One of the grounds for the challenge was that the notification for redistribution of the constituencies for Manasa block was illegal as it had been published without opportunity to the electorate to raise any objection and further that the Government could not alter or modify the constituencies once the same had been notified and the process of election had started. The issuance of the notifications was mala fide and politically motivated with a view to further the prospects of the party in power. What the Supreme Court observed (in paragraph 15) was that:

...The result of any election under a majority system depends in fact not only on the way people vote but on the way their votes are distributed among the constituencies. It was, therefore, impermissible for the State Government to redistribute the constituencies.....so as to give an unfair advantage to the party in power to gain control.....it is quite apparent that the act of gerrymandering was to manipulate the result of the Janapada Panchayat and thereby materially affect the Constitution of the Zila Panchayat.

It also said (in paragraph 16) that:

...There was really no occasion for the State Government to have issued the impugned notification dated November 25, 1970 seeking to restructure the constituencies of the block in the midst of the election....

This decision, it is obvious, turned on its own facts and lays down that constituencies could not be altered during the pendency of the election process. The learned Additional Advocate General is plainly right when he says that in the present cases the reliance by the Petitioners upon the principle accepted in this decision is misplaced, for, the impugned notifications in the present petitions, resulting in bifurcation of the Sabha areas of some Gram Sabhas, were issued long before the process of election started by publication of the notification in that regard in the H.P. Gazette (Extraordinary) of 9th December, 1991. The elections to the Gram Panchayats prior to it had been held in the year 1985 and the term of five years u/s 10(2), including the extension contemplated by the proviso thereto, had come to an end when the notifications assailed in the present writ petitions came to be made.

41. Coming now to the facts of individual cases:

C.W.P. No 640 of 1991, Inder Singh Thakur and Ors. v. State of H.P. and Anr.

By a notification of 6th September, 1991 (Annexure P-4) Gram Sabha Kunihar, consisting of 1 villages, was abolished and two separate Gram Sabhas, Uchagaon and Kothi including some of these villages in each were created.

42. In the reply affidavit sworn on behalf of the State it has been disclosed that the notification had been issued after ascertaining the will of majority of the members of the Gram Sabha, keeping in view the large population of the parent Gram Sabha and some other factors mentioned in the affidavit.

43. In the view that we have taken about the absence of power in the State Government to abolish a Gram Sabha by an administrative order, while dealing with C.W.P. No. 660 of 1991, Govind Singh and Anr. v. State of H.P. and Anr., in the earlier part of this judgment, the petition deserves to be allowed without any further discussion.

C.W.P. No. 558 of 1991, Paras Ram and Ors. v. State of H.P. and Anr.

44. By a notification of 23rd August, 1991 (Annexure-PD) four villages have been excluded from Gram Sabha Shorshan and included in a newly constituted Gram Sabha Kanda, though Gram Sabha Shorshan continues to exist ; the geographical contiguity of villages in it had been disturbed by the aforesaid action This was the principal argument, apart from the general submissions noticed earlier, which were made in this petition by Shri Ashok Sharma, appearing for the Petitioners.

45. The reply affidavit shows that the impugned notification was issued keeping in view the geographical contiguity, historical background and public convenience of the residents of four villages Rakni, Bhalaon, Rasoiadhar and Banyas which have been excluded from Gram Sabha shorshan, who have no objection to their inclusion in the newly constituted Kanda Gram Sabha The Block Development Officer forwarded to the District Panchayat Officer, Mandi, some proposals regarding re organisation of Gram Sabhas of Development Block, Karsog, which had been received by him, on the prescribed proforma for further action, through his letter of 3rd July, 1990 (Annexure-R2), which had been approved by the Panchayat Samiti, Karsog, in its meeting of 11th June, 1990. One of these proposals was for exclusion of villages Rasoiadhar, Banyas, Rakni and Bhalaon from the Sabha area of Gram Sabha Shorshan and their inclusion in the proposed Gram Sabha Kanda. The proposals were forwarded to the State Government through the Director Panchayati Raj whereafter the impugned notification was issued as it was felt that the reorganisation was justified from the point of view of economic, social, geographical and administrative convenience. The assertion that there was disruption in contiguity of villages has been denied in the reply affidavit.

46. In paragraph 3 of the affidavit-in-rejoinder it has been reiterated that the geographical contiguity of villages was ignored A reference has been made to Annexure-PF, a sketch map showing the location of villages and the area of Shorshan Panchayat filed with the affidavit-in-rejoinder. This sketch map would

suggest that two villages Banoti and Manjhota which continue to remain part of Gram Sabha Shorshan have lost their contiguity with other villages of that Gram Sabha. Since, however, it is in the affidavit-in-rejoinder that this allegation has been made in a precise form for the first time and the parties are at issue about the correctness of the allegation relating to geographical contiguity of the villages, we are not inclined to base our decision on this disputed fact.

47. One of the objections which has been taken in the reply affidavit by the State is that the petition was bad for non-joinder of necessary party, namely. Gram Sabha Kanda as a Respondent. Any order in the absence of that Gram Sabha, to its prejudice, says the Additional Advocate General, should not be passed, by us. We find substance in this submission, more so when we find that a large number of residents of the villages, which have now been made part of the newly constituted Gram Sabha, Kanda, have represented to the Government that they are happy with the inclusion of their villages in the new Gram Sabha in village Kanda which is centrally located. We have on the record of the present writ petition representations made to the Government by them in support of the issuance of the notification. We feel that, in the totality of circumstances, the present is not a fit case where this Court should be inclined to intervene in the matter. The petition deserves to fail.

C.W.P. No. 564 of 1991, Milap Chand and Ors. v. State of H.P. and Anr.

48. By notification of 31 August, 1991 (Annexure-P5) Gram Sabha, Jalag, has been bifurcated by exclusion of some villages therefrom and a new Gram Sabha Suan constituted with those villages forming part of the Sabha area.

49. In substance, what has been said by Shri S.S. Kanwar for the Petitioners, who adopted the submissions made on behalf of the Petitioners in C.W.P. No. 660 of 1991, Govind Singh and Anr. v. State of H.P. and Anr., on the basis of allegations made in various paragraphs of the writ petition was that local people were not interested in the proposed change nor were they consulted or heard in the matter. Shri Kanwar drew our attention to a resolution of Gram Sabha Jalag, said to have been adopted on 26 August, 1990, saying that four of the villages forming part of Jalag Gram Sabha, namely, Patt, Tatrora, Arath and Behru should not be included in the new Gram Sabha Suan. Yet, they were included in it.

50. In the reply affidavit it has been asserted that by the reconstitution in the manner effected in the impugned notification of 31 August, 1991 the villages comprised in the two Gram Sabhas have become more compact and better accessible qua the respective headquarters, Jalag and Suan. Also, that these villages, as comprised in the two Gram Sabhas, are now compact blocks on either side of Suker Khad which is a natural geographical boundary separating the two Gram Sabhas. It has also been asserted that earlier a resolution had been adopted with proper quorum by Gram Panchayat Jalag to which the Pradhan, Shri Pramod Singh, was also a party, asking for the bifurcation of the Sabha area of Gram Sabha Jalag on the basis of Patwar Circle so as to create a

new Gram Sabha Suan comprising those villages which have now been included in it. This resolution was ratified by a later resolution of 7 February, 1989 to which Petitioners No. 1 and 3, of the present writ petition, were also parties and the proceedings of the earlier meeting of 27 January, 1989 had been confirmed whereunder it has also been said that the proposals contained in the earlier resolutions were also recommended by the Deputy Commissioner, Kangra who found that the proposed reconstitution was consistent with the five principles laid down by this Court in C.W.P. No. 268 of 1984, Jamit Singh and Ors. v. State of H.P. and Anr. A notional map of the area is also appended with the reply affidavit as Annexure-R5. A look at this map shows that the effect of readjustment of the area of Jalag Gram Sabha in the manner brought about in the impugned notification is pre-eminently just and proper. The Petitioners have not chosen to implead the newly created Gram Sabha Suan and it would not be fair or equitable to pass any order at this stage affecting it in its absence.

51. The three Petitioners, we feel, should not be permitted to assail the action which is not only consistent with the request made on behalf of Gram Sabha, Jalag, earlier but is also otherwise just and reasonable. The petition deserves to be dismissed.

C.W.P. No. 578 of 1991, Narinder Kumar and Ors. v. State of H.P. and Ors.

52. In this petition the challenge is to the notification of 27 August, 1991 (Annexure-PA). Two villages Dann arid Wahawa have been excluded from the Sabha area of Gram Sabha Bassa and included in the Sabha area of a pre-existing Gram Sabha Gohar.

53. The plea is that these two villages were part of Gram Sabha Bassa since the year 1952 Their exclusion was against the wishes of the local people to whom no opportunity was afforded before the notification was issued The exclusion could not be made beyond three years of the date of enforcement of the Amendment Act (13 of 1987) and that public utility institutions which were earlier available to the residents of these villages would not be available on account of their inclusion in Anr. Gram Sabha area.

54. In the reply affidavit, apart from controverting the allegation about non-availability to the residents of these two villages of public utility institutions, what has been stressed is that the notification was issued on account of the request made by the residents of these two villages that these villages be merged in Panchayat Gohar because it would be more convenient to those residents. Notional map has been appended to the reply affidavit filed on behalf of the State of H.P. as Annexure-RII. It discloses factual position about the effect of exclusion of these two villages from the area of Gram Sabha Bassa and their inclusion in Gram Sabha Gohar.

55. The notional map justifies the statement made in the reply affidavit that before issuance of the impugned notification the two villages were surrounded by villages of Gram Sabha Gohar and were geographically isolated from other

villages of Gram Sabha Bassa. Also, that public convenience and compactness was ensured for these villages by their inclusion in the area of Gram Sabha Gohar and that now it would be easier and more convenient for the purpose of these villages to reach the headquarters of Gram Sabha Gohar which is nearer to their villages than the headquarters of Gram Sabha Bassa.

56. Since the action appears, to us, to have been taken at the request of the residents of these two villages and is otherwise reasonable, as is evident from the material brought on the record of this writ petition, it does not deserve to be invalidated on any of the grounds raised in the petition. The Petitioners, we feel, are not entitled to any relief.

C.W.P. No. 610 of 1991, Ashok Kumar and Ors. v. State of H.P. and Ors.

57. By notification of 28 August, 1991 (Annexure-PI) Gram Sabha Mahal Banuri of which the Sabha area originally was constituted of villages Mahal Banuri and Tanda Parla has come to be deprived of village Tanda Parla Another village Saralu Aria is included in Mahal Banuri while Tanda Parla has been included in the Sabha area of Gram Sabha Tanda.

58. The basic submission of Shri D.C. Jishtu for the Petitioners, who has adopted the legal submissions made in C.W.P. No. 660 of 1991, Govind Singh and Anr. v. State of H.P. and Anr., on facts is that the exclusion had been made without opportunity to the Gram Sabha on an extraneous consideration of giving undue advantage to the third Respondent (Shri Krishan Lal) who belongs to reserved category in the matter of votes by including the area of village Saralu Aria, inhabited entirely by the people belonging to his own backward community. The third Respondent was the sitting Pradhan of Gram Panchayat Mahal Banuri.

59. In the reply affidavit filed on behalf of the State of H.P. it has been averred that the notification had come to be made on the basis of the request made by the people of the area who passed a resolution (Annexure- P-2 to the writ petition) in the Panchayat seeking the reconstitution in that form. The resolution was passed by four out of the six surviving members of the Panchayat The allegation about giving any advantage to the third Respondent has been denied.

60. The third Respondent has also filed an affidavit-in-reply. In it, it has been averred that the allegation that he manipulated exclusion of village Tanda Parla and inclusion of an area of village Saralu Aria to have advantage of the majority of the persons of his caste being included in the area of Gram Sabha Mahal Banuri was incorrect. No affidavit-in-rejoinder was filed by the Petitioner to any of the affidavits-in-reply.

61. The plea on behalf of the Petitioners that village Saralu Aria was divided into two parts in contravention of Section 3(1)(ff) has been denied by the Respondents and in the reply affidavit filed on behalf of the State it has been mentioned that through a notification of 28th August, 1991 revenue village Sarlu was being divided into two separate villages Saralu Aria and Saralu Parla A copy

of that notification has been appended as Annexure-R1 (English translation being Annexure-R1/A) saying that it has been issued in exercise of powers u/s 3(1)(ff) of the Act.

62. In view of the uncontroverted averments contained in the reply affidavit it is difficult to uphold the grievance put forward on behalf of the Petitioners in any manner. The impugned notification was issued keeping in view the request contained in the resolution of the Gram Panchayat which was passed by four out of the six existing panches and not on any extraneous consideration. The Petitioners have not been able to make out a case for relief in this petition.

C.W.P. No. 639 of 1991, Gulaba Ram and Ors. v. State of H.P. and Anr.

63. The notification assailed in this case is of 3rd August, 1991 (Annexure-PA). It shows that from Gram Sabha Batran one of the villages (Badehra) was excluded leaving the other two as a part of its Sabha area while from Gram Sabha Jhareri three villages Julabahal, Phauwan-da- Panga and Gujrehra were excluded from out of 12 villages. A new Gram Sabha Manjholi consisting of the aforesaid four villages was created.

64. The case of the Petitioners is that the action was taken for political considerations without application of mind and had the effect of depriving the residents of these four villages of various facilities enumerated in paragraphs 11 and 12 of the petition. No opportunity had been provided to the residents of these villages or the Gram Sabhas for having their say in the matter.

65. In the reply affidavit filed on behalf of the State it has been given out that the action had been taken having regard to the demand made by the people of village Manjholi which was previously a part of Gram Sabha Jhareri and of village Phauwan-da-Panga, also part of Gram Sabha Jhareri keeping in view the difficult communication in the area, the compactness thereof and the recommendations made by the Block Development Officer as well as the Deputy Commissioner, Hamirpur. A copy of the representation made by persons of the village has been appended as Annexure-R4 while a copy of the recommendation made by the Block Development Officer is Annexure-R5. The averments also are that the impugned notification has made the area more compact and convenient as would be apparent from two maps filed as Annexures-R1 and R2 to the reply affidavit. It has also been averred that there will be no deprivation of any of the facilities to the residents outlined in paragraphs 11 and 12 of the writ petition and that they shall continue to be available to them even after the creation of a new Gram Sabha Manjholi. The action has been justified to be consistent with the principles laid down by this Court in C.W.P. No. 268 of 1984, Jamit Singh and Ors. v. State of H.P. and Anr. In paragraph 5 of the reply affidavit it has specifically been asserted that the new Gram Sabha Manjholi had been constituted keeping in view the public demand and convenience and the relevant factors, such as, compactness, difficult terrain of villages and the topographical conditions prevailing at the spot.

66. All these assertions have remained uncontroverted, for no affidavit-in-rejoinder has been filed by the Petitioners inspite of time having been granted for the purpose, by this Court repeatedly.

67. In the circumstances appearing in the affidavits exchanged between the parties in the present case, it is not possible to take the view that the action of the State Government in issuing the impugned notification was politically motivated or was arbitrary. To us it appears to be reasonable and we also feel that no opportunity to the two Gram Sabhas Batran and Jhareri was called for in the circumstances of the case. The Petitioners have not been able to make out a case for grant of relief to them. The petition deserves to fail and the interim order dated 19th November, 1991 merits discharge.

C.W.P. No. 642 of 1992, Dhani Ram v. State of H.P. and Anr.

68. In this petition two notifications of 25th September, 1991 have been assailed. By the first of these (Annexure-P5) issued in exercise of the powers u/s 3(1)(ff) village Dulehar has been split up into two different villages Heera Nagar and Dulehar. By the second, (Annexure-P6) Gram Sabha Dulehar has been divided into two Gram Sabhas Dulehar and Hira Nagar.

69. The plea raised on behalf of the sole Petitioner Dhani Ram, who was the Pradhan of Gram Panchayat Dulehar, is that no one wanted this bifurcation which appeared to be politically motivated. The result of the bifurcation would also be to deprive the residents, who were living in peace and amity, of the use of various facilities detailed in the petition.

70. The reply affidavit on behalf of the State shows that on 31st December, 1990 which was the qualifying date within the meaning of Rule 6 read with Rule 5 of the H.P. Gram Panchayat Rules, 1971, had become 5480 as reported by the Block Development Officer, Una. That had made the Constitution of the original Gram Sabha Dulehar inconsistent with Section 4(1) of the Act. The impugned notification, therefore, came to be made to correct this aberration. After re-constitution the population of Dulehar and Heera Nagar would be 3574 and 1906. It has been denied that the residents would be deprived of any existing facility or that the action was politically motivated. It has been emphasised that the bifurcation had been made keeping in view the five principles laid down by this Court in C.W.P. No. 268 of 1984, Jamit Singh and Ors. v. State of H.P. and Anr.

71. In view of the facts disclosed in the reply affidavit which have remained uncontroverted because the Petitioner has not filed any affidavit- in-rejoinder inspite of opportunity having been given to him for the purpose, we find it difficult to hold in favour of the Petitioner. The circumstances of the instant case are such in which no opportunity to Gram Sabha Dulehar was called for against the proposed action. On the own showing of the Petitioner the Gram Sabha was aware of the proposed action and had been objecting to it after a consideration of the matter in its meetings of 21st May, 1990 and 5th June, 1990. It is quite Anr. matter that the Government did not accept this plea against the bifurcation.

The petition merits dismissal.

C.W.P. No. 646 of 1991, Resham Chand and Ors. v. State of H.P. and Ors.

72. In this petition the impugned notification is of 31st August, 1991 (Annexure-PA) Gram Sabha Thandol consisted of six villages which included Thandol and Bhatpura. Some part of village Thandol as also some part of village Bhatpura was excluded from the Sabha area of Gram Sabha Thandol and a new Gram Sabha Malahu was created. The argument was that villages Thandol and Bhatpura were split-up without separately declaring the parts so split-up as villages u/s 3(1)(ff).

73. This objection does not appear to be factually correct because it has been clearly mentioned in the remarks column of the notification that some Khasra numbers mentioned in respect of these two villages in the remarks column will continue to remain part of those villages while those Khasra numbers which had been mentioned in Column No 4 of the notification will form part of Malahu. The declaration so made is attributable to Section 3(1)(ff) and there does not appear to be any breach of Section 4(1), as urged on behalf of the Petitioners.

74. The plea also taken is that some public utility facilities mentioned in paragraph 10 of the petition which were available to the people would not be available and also that the bifurcation of these villages was politically actuated and was arbitrary in nature. It had been made without application of mind.

75. In the reply affidavit on behalf of the State it has been emphasised that the action had been taken in view of the request contained in the resolution passed by the Gram Panchayat Thandol on 23rd March, 1990 asking for the exclusion of some areas from Gram Sabha, Thandol and creation of a new Gram Sabha at Malahu. It has also been averred that while issuing the notification the principles laid down by this Court relating to administrative integrity, financial viability and geographical contiguity apart from administrative and public convenience were kept in mind It has been denied that any institution of public utility will cease to be available to the people or that the action was taken arbitrarily for political ends.

76. In the state of pleadings it is difficult to take the view that the action was arbitrary or had been taken for some extraneous considerations May be, as mentioned in the resolution (Annexure-PB), the proposal of Gram Panchayat Thandol earlier was that villages Thandol, Tappa and Bhatpura may be allowed to constitute Gram Sabha Thandol and a different Panchayat may be created as Malahu in which Mahal Malahu, Dugni, Ksaba and Thandol villages may be included, which resolution was returned by the Assistant Commissioner (Development) with the note (Annexure- PC) that the village could not be bifurcated so as to constitute a new Panchayat, yet, the State Government could have taken the view that while constituting a new Gram Sabha Malahu, from out of Gram Sabha Thandol, parts of villages Bhatpura and Thandol should be constituted into separate villages and included in the new Gram Sabha Malahu. It is difficult to take the view that any further opportunity was to be given to Gram

Sabha Thandol before issuance of the impugned notification in these circumstances.

The petition deserves to fail.

C.W.P. No. 694 of 1991, Tej Ram and Ors. v. State of H.P. and Anr.

77. There are two notifications dated 9th September, 1991 in this case which have been collectively filed as Annexure-PA. By the first of these, issued in exercise of powers u/s 3(1)(ff), in Gram Sabhas Bran and Pangra, villages Bran and Pangra have been split-up. Some Khasra numbers have been constituted as sub-villages.

78. By the second of these notifications three villages out of Gram Sabha Bran have been excluded from it and included in a newly constituted Gram "Sabha Riyara. Similarly, some villages have been taken out of the area of Gram Sabha Pangra and included in the newly created Gram Sabha Riyara.

79. The Petitioners are nine in number. They are residents of villages forming part of Gram Sabha Bran. No one appears to have come forward to join them as Petitioners from the area of Gram Sabha Pangra.

80. The basic submission made before this Court on behalf of the Petitioners was that though there were two resolutions (Annexure R2/A and R1/A) dated 12 May, 1990 and 25 March, 1991 of Gram Panchayat Bran and Gram Panchayat Pangra respectively saving that three villages from the area of Gram Sabha Bran be excluded therefrom and included in Gram Sabha Riyara and that Gram Sabha Pangra be split up, these resolutions could not be acted upon because in both of them there was a mention that the matter should be placed before Gram Sabhas themselves. Also, that the Panchayat Officer should have called the meetings of these Gram Sabhas or should have asked the Gram Panchayats to convene such meetings and placed the proposals before them for ascertaining their views. It has also been said that the exclusion of area brought about by the impugned notification and creation of a new Gram Sabha Riyara was not convenient to the people of the area. It has also been said that in the reply affidavit what has been emphasised is that by the impugned notifications the distance of the utilities and the headquarters of each Gram Sabha will become more convenient to the residents of the villages. No consideration has been made about geographical contiguity.

81. Gram Panchayats are the executive bodies of the Gram Sabhas and if they have resolved for an action of the nature which is reflected in the impugned notifications, it cannot be said that the view point of the Gram Sabha concerned was not before the State Government. There is no averment in the petition that by the impugned action the geographical contiguity has been disturbed in any manner. What we find stated in the reply affidavit filed on behalf of the State is that the action had been taken on the request made through the resolutions Annexures-R2/A and R1/A and having regard to the various principles laid down

by this Court in its decision in C.W.P. No. 264 of 1984, Jamit Singh and Ors. v. State of H.P. and Anr. It has also been averred that no rights of the Petitioners were to be adversely affected either in respect of estates or Phatis or hamlets and that the effect of the impugned action was to result in greater convenience to the people.

82. We find it difficult to accept the plea that even after the resolution of the Gram Panchayats there was any statutory obligation upon the State to have asked for these resolutions to be placed before the Gram Sabhas or that such action was called for upon any principle of natural justice. The resolutions could be taken into account by the State Government for issuance of the impugned notifications of 9 September, 1991 as expression of the desire of the people of the area in favour thereof. We are not inclined, in the circumstances of this case, to intervene in the matter in the present proceedings.

The petition deserves to fail.

C.W.P. No. 759 of 1991, Gauri Chand and Ors. v. State of Himachal Pradesh and Ors. C.W.P. No. 790 of 1991, Subhash Chand v. State of H.P. and Ors.

83. Both these writ petitions assail the same notification of 19th November, 1991 (Annexure-PC-English Translation Annexure-PC/1 in C.W.P. No. 790 of 1991). They also contain a challenge to an office order of 22 November, 1991 (Annexure-PE in C.W.P. No. 790 of 1991).

84. Gauri Chand and six Ors. are Petitioners in C. W. P. No. 759 of 1991. Some of them are members of Gram Panchayat Muchhali while Gauri Chand was its Pradhan. Subhash Chand, the sole Petitioner in C.W.P. No. 790 of 1991, is a resident of village Kharooni in Tehsil Bangana.

85. The grievance in both the petitions is that by the impugned notification of 19 November, 1991 some villages have been excluded from the Sabha area of Gram Sabha Muchhali and that of Gram Sabha Hatli Jasana and have been included in a newly constituted Gram Sabha/Gram Panchayat, Hatli Kesru. It is said that this was done arbitrarily with a view to accommodate the wishes of the local M.L.A. who was to benefit by the creation of the new Gram Sabha Hatli-Kesru. The sitting M.L.A. wanted the Pradhan of the newly constituted Gram Sabha to be of his own choice. The office order of 22 November, 1991 is assailed on the ground that some wards have been reconstituted by it.

86. At the time of hearing of these petitions what was stressed by Shri H.K. Bhardwaj. appearing for the Petitioners, was that the principle of contiguity of villages had been disregarded. He was, however, unable to point to any specific averment to this effect or to a challenge on any specific ground of that nature.

87. The submissions made on behalf of the Petitioners were generally those as were put forward in C.W.P. No. 660 of 1991, Govind Singh and Anr. v. State of H.P. and Anr., which Shri Bhardwaj adopted. On facts, however, he specifically pointed out that the proposal for creation of the new Gram Sabha emanated from

the Deputy Commissioner and not from the people of the area, that is, the Gram Sabha/Gram Panchayat of Muchhali and Gram Panchayat Hatli Jasana. The views of these Gram Sabhas were not solicited or taken into consideration by the State Government. Also, that various public utilities which were earlier available to the residents of the Sabha areas of these two Gram Sabhas would not be available to them on account of creation of a new Gram Sabha Hatli Kesru.

88. As far as public utilities are concerned, the reply affidavits filed on behalf of the State of H.P. in both these petitions contain a clear recital that the rights of the residents of the villages, which now have been included in the newly constituted Gram Sabha, to access to those utilities is not being jeopardised in any manner. It has also been said that the reconstitution has been made keeping in view the principles laid down by this Court in C.W.P. No. 268 of 1984, Jamit Singh and Ors. v. State of H.P. and Anr. Further, that the Constitution of the new Gram Sabha has the effect of making things more convenient to the villages which continue to remain attached to the respective Sabha area.

89. The case of the Petitioners themselves is that the local M.L.A was trying for the Constitution of a new Gram Sabha Hatli Kesru for a long time which was not to the liking of the local people. The fact that there was a proposal for Constitution of a new Gram Sabha was well within the knowledge of the two Gram Sabhas from whom some villages have come to be excluded for constituting Gram Sabha Hatli Kesru. The recommendation made by the Deputy Commissioner, as contained in his communication to the State Government (Annexure-R1 to the reply affidavit), according to the recital in paragraph 7 of the reply affidavit, was given due consideration by the State Government before effecting the change. The averments made in the reply affidavit have remained uncontroverted as no affidavit-in-rejoinder has been filed in any of these two petitions. What has been said in the reply affidavit is that the resolutions said to have been passed at the meeting of Gram Panchayat Muchhali on 20 August, 1991 objecting to the exclusion of some villages, could not be treated as representing the views of the majority as the meeting had not been properly convened. There were some interpolations in the proceedings book of the Gram Panchayat.

90. In view of the circumstances appearing in the affidavits exchanged between the parties it is clear that the proposal for creation of a new Gram Sabha, by excluding some areas from the Sabha area of Gram Sabha Muchhali and Gram Sabha Hatli Jasana, was within the knowledge of these Gram Sabhas on account of the effort which the local M.L.A was making in that regard. The Deputy Commissioner also recommended the creation of the new Gram Sabha. It is not possible to say that the impugned notification of 19 November, 1991 was issued without application of mind or arbitrarily.

91. No argument whatsoever was addressed before us by the learned Counsel for the Petitioners in respect of the office order of 22 November, 1991. We need not go into that aspect. The Petitioners have not, in our opinion, been able to make

out a case for relief and the petitions deserve dismissal.

92. In conclusion, C.W.P. No. 660 of 1991, Govind Singh and Anr. v. State of H.P. and Anr. and C.W.P. No. 640 of 1991, Inder Singh Thakur and Ors. v. State of H.P. and Anr., are allowed and the notifications dated 23 August, 1991 (Annexure-PA) and 6 September, 1991 (Annexure-P4) respectively, assailed therein, are quashed. The remaining writ petitions are dismissed. However, parties are left to bear their own costs in all these petitions.

93. Order accordingly.