
(1964) 09 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 317 of 1964 (J)

Gram Panchayal Chicholi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-09-1964

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 360, 360(2), 361

Citation : (1964) JLJ 680

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and M.V. Tamaskar, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—The petitioners in this case challenge the validity of the establishment and constitution under the Madhya Pradesh Panchayats Acts, 1962 (hereinafter called the Act) of the Chicholi Gram Sabha as including in its area the villages Chicholi, Sonpur and Nivari according to a notification dated 2nd June 1964 published in the Madhya Pradesh Gazette, Extra-Ordinary, of 4th June 1964. They pray that the aforesaid notification in regard to the constitution of the Chicholi Gram Sabha be quashed and the opponent be restrained from giving effect to it.

2. The material facts are that a Gram Panchayat was first established for Chicholi under the Central Provinces and Berar Panchayats Act, 1946, and was functioning when the Madhya Pradesh Panchayats Act, 1962, came into force. By virtue of section 388(2) (a) of the Act this Gram Panchayat became a Gram Panchayat deemed to be duly established and constituted under the 1962 Act and its area came to be deemed as a Gram Sabha area under the Act. u/s 388(3) a Gram Sabha or a Gram Panchayat deemed to be established or constituted under the Act can continue as such until a corresponding Gram Sabha or Gram Panchayat is established or constituted in its place in accordance with the

provisions of the Act. That sub-section runs as follows:

(3) A Gram Sabha, Gram Panchayat, Adivasi Panchayat, Pargana Panchayat or a Nyaya Panchayat deemed to be established or constituted under sub-section (2) shall continue as such under this Act till such time as a corresponding Sabha, Panchayat or Nyaya Panchayat is established or constituted in its place in accordance with the provisions of this Act.

After the coming into force of the Act of 1962 the Government initiated proposals for the establishment and constitution under the Act of Sabhas for various villages in the State and published those proposals in the Extraordinary Gazette of 5th February 1964. According to those proposals the area of the Chicholi Gram Sabha was shown as comprising of Chicholi and Sonpur villages. The petitioners were apparently satisfied with these proposals and made no objection to it. Later on, the Government published in the Extra-ordinary Gazette dated 4th June 1964 a notification showing the area of Chicholi Gram Sabha as consisting of the villages Chicholi, Sonpur and Niwari. The petitioner's contention in brief is that the new Gram Sabha established and constituted for village Chicholi, as notified in the Gazette dated 4th June 1964, involved an alternation in the area of the Gram Panchayat for Chicholi which was constituted under the Act of 1946 and which area has been deemed to be a Gram Sabha area under the Act of 1962; that an alteration in the limits of a Gram Sabha area by including in it or excluding therefrom any local area could be effected only in conformity with sections 360 and 361 of the Act; and that as the new Gram Sabha was established and constituted without following sections 360 and 361, it could not be regarded as a valid body under the Act.

3. It has been admitted by the State in its return that according to the proposals published in the Extra-ordinary Gazette of 5th February 1964 the area of the Chicholi Gram Sabha was shown as comprising of the area of Chicholi and Sonpur villages. It has, however, been averred that after considering the objections received to the proposals notified on 5th February 1964 the Government decided to include the area of Niwari village in the Chicholi Gram Sabha area and accordingly published on 4th June 1964 a notification showing the Chicholi Gram Sabha as consisting of Chicholi, Sonpur and Niwari. It is not denied that the provisions of sections 360 and 361 of the Act were not followed in the establishment and constitution of the new Chicholi Gram Sabha. Shri Bhawe, learned Government Advocate, contended that compliance with sections 360 and 361 was not necessary in this matter as those provisions applied only when a Gram Sabha had to be established for any area for the first time u/s 3 of the Act; that the Chicholi Gram Panchayat, the area of which came to be deemed as the Gram Sabha area u/s 388(2), was not a body established for the first time u/s 3 of the Act; and that u/s 388(3) the Government could establish or constitute in the place of a Gram Panchayat or a Gram Sabha deemed to be established or constituted under the Act by virtue of sub section (2) of section 388 a new Gram Panchayat or a Gram Sabha in accordance with the Act without

following sections 360 and 361. Learned Government Advocate sought to reinforce his argument by referring to the amendment made in the 1962 Act by section 8 of the Madhya Pradesh Panchayats (Amendment and Supplementary) Act, 1963 (hereinafter referred to as the Amending Act). Section 8 of the Amending Act inserted two new sub-sections in section 388 in the following terms:

(4) Notwithstanding anything contained in this Act, a Gram Sabha to be established for the first time under this Act for the area covered by a Gram Sabha or Sabhas deemed to be established under sub-section (2) and continued as such under sub-section (3) shall be established in accordance with section 3, and where in so doing the limits of the deemed Sabha or Sabhas, as the case may be, are altered, the State Government may, by order,-

(i) determine the extent to which the assets and liabilities of any Gram Panchayat of the deemed Gram Sabha shall be the assets and liabilities of the Gram Panchayat of the new Sabha; and (ii) provide for-

(a) application of such of the rules, bye-laws and orders to the area of the new Sabha as were in force in any deemed Gram Sabha immediately prior to the date of establishment of such new Sabha; and

(b) such other incidental and consequential matters as it may deem fit to provide.

(5) In making an order under sub-section (4), the State Government may follow, as far as may be, the procedure laid down in section 366 and the provisions of section 367 shall mutatis mutandis apply to such an order.

It was said that the new sub-section (4) spoke of the establishment of a Gram Sabha for the first time under the Act for the area covered by a Gram Sabha deemed to be established by section 388 (2) and dealt with a situation where in so doing the limits of the deemed Sabha were altered and made a provision for determining the extent to which the assets and liabilities of a Gram Panchayat of a deemed Gram Sabha would be the assets and liabilities of the Gram Panchayat of the new Sabha; and that sub-section (5) specifically laid down that in making an order under new sub-section (4) the State Government may follow the procedure laid down in section 366 and that section 367 would apply mutatis mutandis to such an order; that these new sub-sections (4) and (5) would not have been necessary if the provisions of sections 360 and 361 had applied in the establishment and constitution of a Gram Sabha for the area covered by a Gram Sabha deemed to be established u/s 388 (2) and continued under sub-section (3) of section 388; and that in that event the provisions of sections 366 and 367 of the Act would have become applicable ipso facto.

4. There is no dispute that section 388 (3) of the Act gives to the Government the power to establish and constitute in accordance with the provisions of the Act a Gram Sabha or a Gram Panchayat in place of the deemed body u/s 388 (2) and continued under sub-section (3). The controversy centres round the question whether in the process of the establishment and constitution of a Sabha or a

Panchayat in accordance with the Act in place of the deemed body sections 360 and 361 come into play if the establishment and constitution of the new body involved an alteration in the limits of the deemed body. Section 360 of the Act requires the State Government to notify its intention of altering the limits of a Gram Sabha or of amalgamating two or more Gram Sabhas or of splitting up a Gram Sabha. Every such notification must define the limits of the local area intended to be included in or excluded from a Gram Sabha area, or of the areas of the Gram Sabhas intended to be amalgamated, or of the area of the Gram Sabha intended to be split up. Then section 361 lays down that any inhabitant of the area or areas affected by a notification u/s 360 may submit his objection to the proposal of the Government within the time specified therein and that when sixty days from the date of the publication of the notification u/s 360 have expired and the Government has considered the objections, the Government may by a notification alter the limits of the Gram Sabha concerned or constitute a new Gram Sabha after amalgamation or splitting up an existing Gram Sabha. These two sections, as they are worded, apply even to those Gram Sabhas, which are deemed Gram Sabhas u/s 388 (2), if in the establishment or institution u/s 388 (3) of a new Sabha in accordance with the Act its limits are altered. The words "Gram Sabha" used in the two sections have not been qualified by the use of any word or expression excluding a deemed Gram Sabha from the operation of the two sections.

5. Learned Government Advocate referred to section 2 (xi) of the Act defining "Gram Sabha" as meaning the Gram Sabha established u/s 3 and urged that a deemed Gram Sabha or a Gram Panchayat u/s 388 (2) was not a Gram Sabha established u/s 3 or a Gram Panchayat established u/s 10; that the expression "Gram Sabha" must be understood in the sense given to it by clause (xi) of section 2; and that consequently sections 360 and 361 had no applicability in the establishment or constitution of a new Sabha in accordance with the Act in place of a deemed body. We are unable to accede to this contention which proceeds on the assumption that the Act of 1962 contemplates the establishment of a Gram Sabha u/s 3 or of a Gram Panchayat u/s 10 and of Sabhas and Panchayats under other provisions of the Act. The only provisions in the Act for the establishment of a Gram Sabha or a Gram Panchayat are those contained in section 3 and 10. Sections 388 (2) is not a provision saying that the Gram Panchayats, Gram Sabha and other bodies functioning in various regions immediately before the commencement of the Act are declared to be established and constituted under the Act and shall exercise the powers and perform the duties conferred by the Act on a Gram Panchayat or a Gram Sabha under the Act and shall continue to function as such till they are replaced by new bodies established and constituted in accordance with section 3 of the Act. Sub-sections (2) and (3) of section 388 are no doubt temporary and transitional provisions intended to provide for the continuance of all the bodies functioning immediately before the commencement of the Act. But the language of the two sub-sections does not deal merely with the continued functioning of such bodies exercising the powers and performing

the duties conferred by the Act on a Gram Sabha or a Gram Panchayat. It goes further and deems all Gram Panchayats Gram Sabhas and other bodies functioning immediately before the commencement of the Act as bodies "duly established and constituted under the Act". The expression "duly established" occurring in section 388 (2)(i) is very significant and important. It makes the deemed bodies fictionally, though not really, bodies established and constituted under the Act. As the only provision under the Act for the establishment of a Gram Sabha is section 3, and of a Gram Panchayat is section 10, a Gram Sabha or a Gram Panchayat, whether really or fictionally, "duly established" is one established u/s 3 or section 10. If the contention of the learned Government Advocate that besides the Gram Sabha established u/s 3 the Act envisaged a Gram Sabha established under other provision were to be accepted, and the expression "Gram Sabha" wherever used in the Act were to be read as meaning only those Gram Sabhas established u/s 3, then the result would be that the deemed and continued bodies under sub-sections (2) and (3) of section 388 of the Act would not be composite to exercise the powers and perform the duties conferred by the Act on a Gram Sabha. It is noteworthy that in sub-sections (2) and (3) of section 388 there is no provision saying that the deemed bodies shall exercise the powers and perform the duties conferred by the Act on a Gram Sabha or a Gram Panchayat. No such provision is to be found anywhere else in the Act. The continued functioning of the deemed bodies is by virtue of the fact that as bodies deemed to be duly established and constituted under the Act they necessarily are competent to exercise the powers and perform the duties imposed by the Act on a Panchayat or a Sabha. In our opinion, there is no justification for cutting down the wide generality of sections 360 and 361 by the construction sought to be put by the learned Government Advocate on the words "Gram Sabha" used in those provisions. Even on principle there is no warrant for excluding the operation of sections 360 and 361 when the limits of a deemed Gram Sabha have to be altered in the process of establishing in its place a new Sabha in accordance with the Act. The object of sections 360 and 361 is clearly to apprise the inhabitants of the Gram Sabha area or areas of the intention of the Government about the alteration of the limits of a Gram Sabha and to give them an opportunity of submitting their objections to the proposal. It cannot be maintained that while there is good ground for notifying the intention of the Government and inviting objections of the inhabitants when the Gram Sabha, the limits of which are intended to be altered, is the one established u/s 3, there is none whatsoever when the limits of a deemed Gram Sabha are proposed to be altered by establishing a new body in its place in accordance with the Act. The necessity of apprising the inhabitants of an area of the Government's proposal and of inviting their objections exists equally in one case as in the other. In our judgment, sections 360 and 361 apply in the establishment u/s 3 of a new Sabha (sic) place of a "deemed" Sabha.

6. The new sub-sections (4) and (5) inserted in section 388 by the Amending Act do not in any way lend support to the submission of the learned Government Advocate that sections 360 and 361 have no applicability when a deemed Gram

Sabha is readied by a new one in accordance with the Act. In order to appreciate the object and effect of the two new sub-sections it is first necessary to note sections 362 to 367 of the Act. Section 362 gives to the Government the power to issue consequential orders, inter alia, in respect of the constitution of a Gram Sabha or a Gram Panchayat for the altered area. This is a general provision applicable to a continued Gram Sabha or a Gram Panchayat the limits of which are altered in the establishment of a new body in accordance with the Act. Section 361 which deals with the apportionment of the assets and liabilities between the Gram Panchayats when the limits of their Gram Sabhas are altered, applies only to those cases where the Gram Panchayats continued to exist even after an alternation of the limits of their Gram Sabhas. Sections 361 and 365 are concerned with the effect of amalgamation of Gram Sabhas and splitting up of a Gram Sabha. Section 366 relates to the apportionment of the assets and liabilities of a Gram Panchayat between several Gram Panchayats where the original Gram Sabha is split up. Section 367 provides for representation when the assets and liabilities are apportioned u/s 366. It will thus be seen that barring section 361 which, inter alia, provides for the making of a consequential order with regard to the constitution of the new Gram Sabha, the other sections, namely, sections, 363 to 367 have no applicability at all when a Gram Sabha is established in accordance with the Act for the area covered by a Gram Sabha deemed to be established u/s 388 (2) and in into place. When u/s 388 (3) a new body is established for the deemed body, "the deemed body" disappears. If in the establishment of a new body the limits of a deemed Gram Sabha are altered, the disappearance of the deemed body does not however change the fact of alteration of the limits In such a case sections 360 and 361 apply, but section 363 has no applicability. What the two new sub-sections, namely, sub-sections (4) and (5) of section 388, do is to provide for consequential arrangements when in the establishment of a new Gram Sabha or Sabhas in accordance with the Act for the deemed one there is an alteration in the limits of the deemed Sabha or Sabhas. The two new sub-sections give to the Government the power to determine the extent to which the assets and liabilities of a Gram Panchayat of the deemed Gram Sabna shall be the assets and labilities of the Gram Panchayat of the new Sabha, provide for the application of the rules, bye-laws and orders to the areas of the new Sabha and for other incidental and consequential matters, and make provisions contained in section 367 about representation in regard to assets and liabilities applicable mutatis mutandis. The provisions in the two new sub-section do not cover any matter dealt with by sections 363 to 367. They are not provisions which are redundant or inserted by way of abundant caution. They only supply an omission in the original Act which did not contain any provisions with regard to consequential arrangements when in the establishment of a new Gram Sabha or Sabhas in accordance with the Act for the deem d Sabha or Sabhas there is an alteration in the limits of the deemed Sabha or Sabhas,

7. It must be noted that the non-obstante expression in sub-section (4), namely, "Notwithstanding any thing contained in this Act"" in no way excludes the

operation of section 360 and 361 in a case such as the one before us. In plain language sub-section (4) means that a new Gram Sabha shall be established in accordance with section 3 for the deemed one and that where in so doing the limits of the deemed Sabha are altered the Government may pass orders relating to the matters stated in that sub-section; and that no provision in the Act will stand in the way of the Government doing this. As a matter of fact, there is no provision in the Act which prohibits the Government from establishing a new Sabha in accordance with the Act for the deemed Sabha. On the other hand, section 388 (3) makes a specific provision for that; and as pointed out above, the original Act did not contain any provision dealing with the matters consequent all to the establishment of a new Sabha involving an alternation in the limits of the deemed Sabha. Section 360 is not a provision prohibiting the Government from establishing a new Sabha under the Act in place of the deemed Sabha. It only prescribes a certain procedure which has to be followed where the limits of a deemed Sabha are altered. It is in no way overridden by the non-obstacle clause. Thus, no bar was put by any provision in the Act as it stood before the amendment in regard to matters mentioned in sub-section (4). The use of the non-obstacle expression in sub-section (4), therefore, appears to be nothing but (the draftsman's) ineptitude.

8. There is thus no foundation for the argument that the fact that by the amending Act new sub-sections (4) and (5) were inserted in section 388 only indicated that sections 360 and 361 had no operation in the process of the establishment of a new Sabha in accordance with the Act for a deemed Sabha, and further that if sections 360 to 361 had been applicable, then sections 362 to 367 would have been automatically applicable. In our opinion, the plain and necessary implication of the new sub-section (4) and (5) of section 388 is that sections 360 and 361 apply when in the establishment of a new Gram Sabha or Sabhas in accordance with the Act for the deemed Sabha or Sabhas there is an alternation in the limits of the deemed Sabha or Sabhas.

9. Here, the provision of 360 and 361 were admittedly not complied with in establishing the new Chicholi Gram Sabha as notified in the Extra-ordinary Gazette of 4th June 1964. On the intention of the Government notified in the Extra ordinary Gazette dated 5th February 1964 that the Chicholi Gram Sabha area would consist of the villages Chicholi and Sonpur, the Government could not include the village Niwari in the Chicholi Gram Sabha area. This is clear from the fact that the final notification u/s 361 can, inter alia, deal with the inclusion in the area of a Gram Sabha or exclusion therefrom of only that local area in regard to which intention was "notified" u/s 360 (2). Here, in the present case, in the notification published in the Gazette of 5th February 1964 there was no mention whatsoever of the intention of the Government about the inclusion of Niwari village in the new Gram Sabha for Chicholi.

10. The provisions of sections 360 and 361 are mandatory. The opening words of the first. sub-section of section 360, "The State Government may, by notification,

signify its intention..." do not mean that it is in the discretion of the Government whether or not to follow the requirements of sub-section (2) of section 360. The discretion that is given to the Government by the first sub-section of section 360 is in regard to the "entertaining an intention". The Government may intend or may not intend to alter the Limits of a Gram Sabha or amalgamate two or more Gram Sabhas or split a Gram Sabha. But if it proposes to do any such thing, then it has to comply with the provisions of sub-section (1) of sections 360 and 361. As in the present case the establishment of Chicholi Gram Sabha as notified in the Extra-ordinary Gazette of 4th June 1964 was contrary to the provisions of section 360 and 361, it cannot be regarded as valid

11. For the foregoing reasons, this petition is allowed and the notification published in the Extra-ordinary Gazette dated 4th June 1964, in so far as it relates to the establishment of Chicholi Gram Sabha as comprising of Chicholi, Sonpur and Niwari, is quashed. It is needless to say that the result of this quashing is that the Gram Sabha for Chicholi, which was functioning immediately before the commencement of the Act of 1962, still continues to function u/s 388 (3) of the Act. In the circumstances of the case, we make no order about costs. The outstanding amount of the security deposit shall be refunded to the petitioners.