(2010) 04 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Gram Panchayat APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 3

Citation : (2011) 1 RCR(Civil) 682

Hon'ble Judges : Rajan Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajan Gupta, J.—The present writ petition has been preferred by Gram Panchayat Village Mattar Hithar seeking a writ in the nature of certiorari for quashing order dated 6th March, 2009, Annexure P-1, passed by respondent No. 3, whereby property of the petitioner Gram Panchayat has been distributed amongst two Panchayats, namely, Mattar Hithar and Basti Labh Singh Wala in the ratio of 77% and 23% respectively.

2. Brief factual background of the case is that the State Government issued a notification u/s 3 of the Punjab Panchayati Raj Act, 1994 (hereinafter to be referred as "the Act") creating a new Gram Panchayat of village Basti Labh Singh Wala out of the existing Gram Panchayat of village Mattar Hithar (hereinafter to be referred as "petitioner Gram Panchayat"). In view of Section 3 (3) (i) of the Act, whenever any area is excluded from any Gram Sabha area and is included in any other Gram Sabha or a new Gram Sabha is constituted, the assets and liabilities of the Gram Panchayat of said Gram Sabha is to be apportioned between the existing Gram Panchayat and the one newly created. Vide order, Annexure P-1, issued by respondent No. 3, it was directed that land be distributed amongst Gram Panchayat Mattar Hithar and Gram Sabha Basti Labh Singh Wala in the ratio of 77% and 23% respectively. The Gram Panchayat Mattar Hithar has preferred the present writ petition alleging that distribution of assets and liabilities has not been done proportionately and thus there is

violation of Section 3 (3) of the Act.

3. Reply has been filed on behalf of the respondents No. 1 to 5. It has been stated therein that keeping in view the population as it existed at the time of process of carving out new Gram Panchayat, it was decided to distribute the assets and liabilities of Gram Panchayat in the ratio of 77 : 23. According to the stand of the State, the apportionment was correctly done keeping in view the fact that population of village Mattar Hithar at the relevant time was 943 and that of Basti Labh Singh Wala was 276. The State has, thus, sought to justify the distribution of assets and liabilities of the Gram Panchayat.

4. Learned Counsel for the petitioner has vehemently contended that the distribution of assets and liabilities should have been in the ratio of 82 : 18, keeping in view the larger area and population of village Mattar Hithar. He has submitted that distribution of assets and liabilities is not proportionate and thus, order, Annexure P-1 deserves to be quashed.

5. Learned State counsel has, however, submitted that the distribution of assets and liabilities was done totally in accordance with the provisions of the Act and keeping in view the population of the two villages. According to him, the concerned authority correctly arrived at the figure of 77 : 23.

6. I have heard learned Counsel for the parties and perused the record annexed with the petition.

7. Section 3 of the Act, which provides for establishment of Gram Sabha areas, reads as under:

3. Establishment of Gram Sabha areas. (1) The State Government may, by notification, declare any village or group of contiguous villages with a population of not less than two hundred to constitute a Gram Sabha area:

Provided that a new Gram Sabha area may be constituted for any village or group of contiguous villages in respect of a separate distinct abadi or group of abadis having a population of not less than two hundred taking into consideration its physical distance from the main village or villages, as the case may be and other relevant facts:

Provided further that neither the whole nor any part of -

(a) a Notified Area u/s 241 of the Punjab Municipal-Act, 1911, or any other Act for the time being in force: or

(b) a Cantonment; or

(c) a Municipality of any class., or

(d) a Municipal Corporation;

shall be included in a Gram Sabha area unless the majority of voters in any Notified Area or Municipality of the Third Class desire the establishment of a

Gram Sabha In which case the assets and liabilities, if any, of the Notified Area Committee or the Municipal Committee, as the, case may be, shall vest in the Gram Panchayat of that Gram Sabha and the Notified Area Committee or the Municipal Committee shall cease to exist.

(2) That State Government may, by notification, Include any area in or exclude any area from the Gram Sabha area.

(3) (i) where any area excluded from any Gram Sabha area under Sub-section (2) is either included in any other Gram Sabha area or is constituted into a new Gram Sabha area, the assets and liabilities of the Gram Panchayat of the Gram Sabha area from which such area is so excluded (hereinafter referred to as the existing Gram Panchayat) shall be apportioned between the successor Gram Panchayats In the manner specified hereinafter.

(ii) All lands and all stores, articles and other goods belonging to the existing Gram Panchayat shall,

(a) If within the Gram Sabha area of that Gram Panchayat pass on to the successor Gram Panchayat in whose Gram Sabha area they are situated;

(b) If outside the Gram Sabha area of that Gram Panchayat be apportioned between the successor Gram Panchayats according to population ratio;

(iii) The Gram Fund, Bank Balances grants received from the State Government from time to time shall be apportioned between the successor Gram Panchayats according to the population ratio: Provided that a grant given by the State Government for the development of an area which forms part of the Gram Sabha area of any of the successor Gram Panchayats shall be transferred to that successor Gram Panchayat.

(iv) The right to recover arrears of any tax on property shall belong to the successor Gram Panchayat in whose Gram Sabha area the property is situated and the right to recover any other tax imposed by the existing Gram Panchayat shall belong to the successor Gram Panchayat in whose Gram Sabha area the place of assessment of that tax is situated.

(v) Where before the date of exclusion of Gram Sabha area the existing Gram Panchayat has made any contract for the purposes of that Gram Panchayat, that contract shall be deemed to have been made-

(a) if the purposes of the contract are on and front the day of exclusion of the Gram Sabha area, exclusively purposes of any one of the successor Gram Panchayat, by that successor Gram Panchayat; and .

(b) if the purposes of the contract are on and from that day not exclusively purposes of any one of the successor Gram Panchayats, by all the Gram Panchayats;

and the rights and liabilities which have accrued or may accrue, under any such contract, shall to the extent to which they would have been the rights and liabilities of the existing Gram Panchayats, be the rights and liabilities of the successor Gram Panchayat, or, as the case may be, the successor Gram Panchayats according to their population ratio.

(vi) where the existing Gram Panchayat is a party to any legal proceedings with respect to any property, rights or liabilities subject to apportionment under this section, the successor Gram Panchayat which succeeds to, or acquire a share, In that property or those rights or liabilities, shall he deemed to be substituted or added as a party to those proceedings, and the proceedings may continue accordingly.

(vii) The benefit or burden of any assets and liabilities of the existing Gram Panchayat, not dealt with in the forgoing provisions of section shall, pass on to the successor Gram Panchayats in the manner agreed upon between them and in case no such agreement within a period of one year from the date of exclusion of the Gram Sabha area the State Government shall be competent to determine the same at the request of either of the Gram Panchayats.

(4) If whole of the Gram Sabha area is included in an urban estate to which the provisions of the Punjab Municipal Act, 1911 or the Punjab. Municipal Corporation Act, 1976, are applicable or in a city, municipality cantonment, or Notified Area under any law for the time being in force, the Gram Sabha and the Gram Panchayat for that area shall cease to exist and the assets and liabilities of the Gram Panchayat shall be disposed of in the prescribed manner.

8. A perusal of the aforesaid Section shows that, sub section (3) thereof contains provisions for distribution of assets and liabilities of Gram Panchayat in eventuality such as one arising in the instant case. It appears that all lands, store, articles have to be apportioned according to the population on the basis of the same criteria. The Section exhaustively deals with the distribution of all such assets and liabilities. However, in respect of those assets and liability, which is not dealt with in this Section, a separate provision has been made in Clause (vii) of sub section (3). A perusal of the order, Annexure P-1 shows that the criteria of population was taken into consideration by the concerned authority while taking a decision to distribute assets and liabilities of petitioner Gram Panchayat and the newly created Gram Panchayat in the ratio of 77 : 23.

9. Learned Counsel for the petitioner has not been able to point out any legal infirmity with the said order. This Court is, thus, of the view that the said order has been correctly passed by the appropriate authority. Even the stand taken by the State in the reply that apportionment of assets and liabilities has been on the basis of ratio of population of two villages, has not been rebutted by the petitioner by filing rejoinder.

10. Thus, no interference is called for in the impugned order in the writ jurisdiction of this Court. The petition is dismissed being devoid of merit.

