
(2010) 09 P&H CK 0279
In the Punjab And Haryana At Chandigarh
Case No : CWP. No. 5424 of 2010

Gram Panchayat Bhadson

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Constitution of India, 1950 — Article 243, 243N, 243Q, 40
Punjab Municipal Act, 1911 — Section 4, 4(1), 5

Citation : (2011) 1 ILR (P&H) 757 : (2011) 2 RCR(Civil) 88

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—Gram Panchayat, Bhadson through its Sarpanch Chunni Lal has approached this Court by way of filing the present petition with a prayer that order dated 25th November, 2009, Annexure P4, whereby the objections raised by the petitioner against the creation of Nagar Panchayat, Bhadson by dissolving Gram Panchayat, Bhadson have been rejected, be quashed being illegal, arbitrary and has been passed with a mala fide intention only to deprive the elected Gram Panchayat to continue in its office.

2. As a sequel to above prayer, a further direction has been sought that order dated 30th December, 2009, Annexure P3, whereby Nagar Panchayat, Bhadson has been created by dissolving Gram Panchayat, Bhadson and Gram Panchayat, Ram Singh Nau, be also quashed and a further direction be issued that Gram Panchayat, Bhadson shall continue to exist till the expiry of its term.

3. To appreciate the prayers made in the writ petition, it will be necessary to state the facts briefly :

4. On 30th May, 2008, the elections to the Gram Panchayats, Bhadson and Ram Singh Nau were held along with various other Gram Panchayats in the State of Punjab. In June, 2008, both the Gram Panchayats elected their Sarpanches. It is stated that since Gram Panchayats Bhadson and Ram Singh Nau elected the Panches and Sarpanches owing allegiance to the opposition party, the ruling

party to deprive office bearers of the Gram Panchayats of their tenure, issued a draft notification dated 4th July, 2008, Annexure P1, inviting objections from the concerned person for constitution and creation of Nagar Panchayat, Bhadson. The draft notification stated that in exercise of powers conferred u/s 4(1) of the Punjab Municipal Act, 1911 (as amended by Act No. 11 of 1994), (hereinafter to be referred as, the Act") having regard to population of area, the density of population therein, the revenue generation for local administration, the percentage of employment in non agricultural activities, the economic importance and development of the area in a planned manner, it was proposed to declare the local area comprising of villages Bhadson and Ram Singh Nau to be the transitional area for constituting Nagar Panchayat at Bhadson. The objections were to be filed within 30 days from the date of publication of notification. As averred, pursuance thereto, the petitioner-Gram Panchayat filed the objections, Annexure P2 and a perusal thereof reveals that they have not been filed on behalf of the Gram Panchayat but have been signed by various persons of the area. The objections submitted can be summed up as under :

(a) The total area of two villages i.e. Bhadson and Ram Singh Nau is 800 killas approximately, out of which 500 killas is used for agricultural activities. Thus, 2/3rd area being used for agricultural purposes constitution of Nagar Panchayat is not a viable option.

(b) The total population of two villages is approximately 6000 and the density of population spread over in 800 killas is not such that two Gram Panchayats be converted into urban area.

(c) There are 35 shops in Village Bhadson and 25 to 30 shops in Village Ram Singh Nau, therefore, the commercial activities carried out in these villages are not such that a Nagar Panchayat is to be created.

(d) There is one Paper Mill, one Ice Factory and 3 Shellers, that being only industrial activities, constitution of Nagar Panchayat will not be in the interest of the area.

(e) That revenue generation from two village is not such that for development of the area, Nagar Panchayat is necessary.

The objections were considered and rejected by the Government vide order dated 25th November, 2009. Annexure P4. It will be pertinent to mention here that an opportunity of hearing was also afforded to counsel for the petitioner--Gram Panchayat. One of the primary objections raised that office bearers of the Gram Panchayat will be deprived of the tenure for which they were elected, was rejected on the ground that voters of the Nagar Panchayat will soon elect their representatives, known as Councilors. Thus, an opportunity will be afforded to the objectors to contest the election. While rejecting the objections, Principal Secretary to Government of Punjab, Local Government Department, observed as under:

...The filed reports establish that there exist more than 500 shops in Bhadson and Ram Singh Nau. Apart from this all kinds of public, educational and commercial establishment also exist, which includes, a Petrol Pump and Cinema, 13 workshops, 10 schools, a college and three other educational institutions, two Rice Shelters, Ice Factory etc. All this leads to irresistible conclusion that the condition of an established bazaar in the area is duly fulfilled....

5. After the objections were rejected on 25th November, 2009, notification, Annexure P3. constituting a Nagar Panchayat was issued.

6. In the response filed to the writ petition. State of Punjab submitted that a Committee headed by Deputy Commissioner, Patiala was formed who directed the Regional Deputy Director, Local Government. Patiala to examine the proposal regarding formation of Nagar Panchayat Bhadson. The Committee in the meeting held on 29th February, 2008 recommended that it is in the public interest to constitute the Nagar Panchayat at Bhadson.

7. Mr. H.S. Sethi, learned counsel appearing for the petitioner has assailed the process by which notification, Annexure P3 was issued. It is stated that order dated 25th November, 2009; Annexure P4, whereby the objections were rejected was ante dated and was passed after the transfer of respondent No. 3--Shri D.S. Bains, Principal Secretary, Local Government, Punjab who has been impleaded by name. These averments have been vehemently denied by the State.

8. Before the arguments raised are appreciated, it will be apposite here to reproduce Article 243-Q of the Constitution of India and Sections 4 and 5 of the Act :

243-Q. Constitution of Municipalities :

(i) These shall be constituted in every State--

(a) A Nagar Panchayat (by whatever name called) for a transitional area, that is to say an area in transition from a rural area to an urban area :

(b) a Municipal Council for a smaller urban area : and

(c) A Municipal Corporation for a larger urban area, in accordance with the provisions of this part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Government may, having regard to the size of the area and their Municipal services being provided or proposed to be provided by an industrial establishment on that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article "a transitional area", "a smaller urban area "or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the

economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this part.

Punjab Municipal Act, 1911

Section 4 Specification of local areas to be smaller urban areas of transitional area and constitution of Municipal Councils and Nagar Panchayats.

(1) The State Government may, having regard to population of the area the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as it may deem fit specify by notification in the official gazette, any area to be a transitional area or a smaller urban area for the purposes of this Act:

Provided that no military cantonment or any part thereof shall be included in such transitional area or a smaller urban area : N.P. Provided further that such an urban area or part thereof, as the State Government may have regard to the size of the area and municipal services being provided or proposed to be provided by an industrial establishment in that area such other factors as it may deem fit, by notification, specify to an industrial township shall not form part of a transitional area or a smaller urban area.

Section 5. Alteration of limits of Municipality-

(1) The State Government may, from time to time, keeping in view the provisions of subsection (1) of Section 4 after consultation with the Municipality, by notification in the official gazette, alter the limits specified for any municipal area so as to include therein or to exclude therefrom such area or.

9. From the facts which have been stated above, it can be safely inferred that for transition of rural area into urban area, the impugned order dated 25th November, 2009, Annexure P4, take into consideration all necessary parameters described in Section 4 of the Act. Furthermore, not only the objections were invited, personal hearing to counsel for the petitioner was also afforded and all objections were dealt with and thereafter notification, Annexure P3 was issued. The controversy raised in the present writ petition is not new. As and when a new Municipality, a Nagar Panchayat or a Municipal Council is created, doors of the Courts have been knocked of to thwart that process, by raising arguments which have been raised in the present petition. This Court in *Bhupinder Singh, versus Union of India*, 1997(3) R.C.R. 594 not only upheld the order of Single Bench whereby inclusion of Nagar Panchayat, Mani Majra in Municipal Corporation, Chandigarh was held valid but also laid down parameters when Courts can cause intervention. In *Bhupinder Singh's case* (supra), reliance was placed on *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, wherein Hon'ble Supreme Court observed that declaration of geographical area into town area is a legislative act in nature because the application of the rest of the provisions are dependent on such a declaration.

10. After issuance of the notification Annexure P3. Gram Panchayats, Bhadson and Ram Singh Nau have ceased to exist. The following observations made in paras 27 to 32 of Bhupinder Singh's case (supra) are required to be noticed :

27. One of the rules of interpretation is that the Legislatures know the freedom known to the law or interpreted from time to time; different words have been used to denote different situations. There can be no gainsaying that the concept of dissolution of gram panchayat and ceasure thereof to exist are different connotations and concepts. The dissolution of a gram panchayat cannot be raised to the pedestal of its ceasing to exist. Dissolution of the gram panchayat envisages the continuation of the corporate body while ceasure brings about an end to the corporate body itself. Plain reading of the Section makes it obvious that it is the dissolution of the gram panchayat which has been protected and not the ceasure.

28. "Ceasure " as defined in the Webster "s Third New International Dictionary means "bring to an end, discontinuing, put a stop to, to die out, become extinct" while the same dictionary describes "dissolution " as "act or the process of dissolving or breaking out, separation into component parts, disintegration, the process of becoming or the state of being relaxed or loosening becoming or being dissolute or dissolving lie or connection". In our considered view in the context and the text of the provisions of the Constitution as well as the statutory laws, the intent of legislature appears to be plainly that the legal identity created, i.e., the constitution of gram panchayat, should continue. It cannot be brought to an end though its components may be loosened for the time being on the happening of a particular eventuality. Since the panchayat is constituted, another reason for taking the dissolution as distinct from ceasure is that gram sabha and the gram sabha area are quite essential for the gram panchayat. In other words, there can be gram panchayat only when there is gram sabha and gram sabha area. Protection is provided to the dissolution of the panchayats. No protection has been provided, and it appears to be intentional, to the dissolution of the gram sabha or gram sabha area. Once the gram sabha and gram sabha area disappear, ceasure of the gram panchayat would be a natural corollary. The above observations further find support from the fact that specific period of office has been provided for the gram panchayat. If gram panchayat is dissolved, constitution of the new gram panchayat can be effected only for the remaining term and not beyond that, whereas for effecting effacement or abolition of gram sabha and gram sabha area, no such period is provided. Both can be brought to an end by acquisition or by enactment. Even the enactment has not been prohibited by the Constitutional amendment of introductory Article 243 of the Constitution of India.

29. For the reasons recorded above, we are of the considered view that the provisions of Article 243(N) of the Constitution of India or Sections 10 and 15 of the Panchayati Raj Act are not violated in any manner by the constitution of the Municipal Corporation which automatically resulted in ceasure of gram sabha and

gram sabha area, thereby resulting into ceasure of the gram panchayat as well.

30. Coming to the last, hut not the least, contention raised that in terms of subsection (4) of Section 3 of the Panchayati Raj Act when the gram sabha or the gram sabha area cease to exist on account of their being included in the urban estate under the Municipal Act, 1911 or the Corporation Act, 1976, the assets and liabilities of the gram panchayats would automatically deem to have vested in the respective institutions, as they can be loosely termed as successor to the gram panchayat. Even otherwise too, we fully agree with the Hon''ble Single Judge that non-framing of any rules for disposal of panchayats properties on its ceasure would be of no consequence, as in terms of section 427 of the Corporation Act, all assets and liabilities of the gram panchayat would automatically vest in the Municipal Corporation.

31. In our considered view. Notification constituting Notified Area, for the reasons recorded in the earlier part of the judgment with respect to constitution of the Corporation, and specifying territorial jurisdiction, is a legislative function. As observed in the earlier part of the judgment, the principles of natural justice cannot be invoked or imbibed while discharging legislative functions unless Legislatures, themselves specifically provide for the same.

32. In our considered view, non-framing of rules for the disposal of panchayat'' properties or their vesting in the Notified Area would not render the Notification constituting the Notified Area as nugatory or violative of any provision for which it can be declared to be ultra vires. If we may hasten to add, nothing substantial has been pointed out that the declaration of the Notified Area suffers from any arbitratiness, non-application of mind or is violative of any statutory provision. Constitution of a Notified Area of small villages being a legislative function, it is for the Legislatures to consider it on all aspects. Ordinarily the Courts cannot substitute their opinion for the opinion of the Legislatures, Mere declaration of an area as Notified Area, later withdrawing and subsequently re-declaring, by itself would not render the declaration of the Notified Area as ultra vires or suffering from the vice of any illegality or irregularity. We may add that no cancellation of gram sabha area is specifically required for declaration of a Notified Area. Nothing substantial has been pointed out.

11. Since it has been held that creation of Nagar Panchayat is a legislative function of the State and the prescribed mode of inviting objections and dealing with them has been adhered to, this Court cannot sit in judgment whether the reasons for rejecting the objections were valid or not''? The Writ Court is not a Court of Appeal. So long as the parameters are followed and the authorities have acted in the manner prescribed, the power of the Court to hold a judicial review is limited.

12. A Division Bench of this Court in Mrs. Swaran Lata Jain and others versus State of Punjab and others, 2008 (4) R.C.R. (Civil) 278 held as under :

8...In any case, it is prerogative of the State to decide about the extension of the

municipal areas and it is not for the Court to venture unless any action of the State Government or its functionaries is shown to be actuated and influenced by apparent bias and mala fide based upon specific and concrete allegations on the basis of verifiable facts. There is nothing on record. The power of judicial review in such matters has to be exercised with utmost care and has to be circumscribed with constitutional and statutory limitation. Hon'ble Supreme Court in the case of State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., made following observations :

44. It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or what committing a breach thereof the courts cannot interfere with the same....

13. The only ground of mala fide alleged is that Gram Panchayats. Badson and Ram Singh Nau were Constituted immediately before the issuance of draft notification, Annexure P1, and it is only to deprive the offices bearers of the Gram Panchayats to complete the tenure for which they were elected. Nagar Panchayat was created as the Panches and Sarpanches of gram Panchayats, Bhadson and Ram Singh Nau belong to opposition.

14. From a perusal of the reasons stated in order dated 25th November, 2009, Annexure P4, it is apparent that constitution of Nagar Panchayat, Bhadson is for the betterment and larger good of the population. There are numerous factors which have been considered by the authorities that the area required transition from rural to an urban area. Therefore, individual good must make way for the public good. The office bearers of the Gram Panchayats, if they are so popular can be re-elected as Councilors of Nagar Panchayat.

15. Hon'ble Apex Courts in State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., did pioneer work to define a "village". With great reverence to their Lordships, as to understand what is "village", the following words are borrowed :

29. As regards the alleged difference in the definition of "village " in the Act and in the Constitution, we have already referred to the fact that Article 40 of the Constitution does not define "village "as such. It only refers to the organisation of "village panchayats " as units of self-government.

30. "Village " has been defined in the Shorter Oxford English Dictionary (1993 Edition) to mean " a self-contained ground of houses and associated buildings, usually in a country area; an inhabited place larger than a hamlet and smaller than a town.....a small self-contained district or community within a city or town, regarded as having features characteristic of a village". The Law Lexicon by P. Ramanath Aiyar (1987 Ed.) states that "village" includes - (a) a village-community; (b) village-lands; (c) rivers passing through or by village-land; and

(d) a group of villages. The expression "village "connotes ordinarily an area occupied by a body of men mainly dependent upon agriculture or occupations subservient thereto. When the area is occupied by persons who are engaged mainly in commercial pursuits, rural areas in the vicinity of a town grow into a suburb of the town.

31. The Encyclopedia Americana (1983 Ed.) (Vol. 28) states that village is-

a type of community, generally small but without exact or commonly accepted size limits. Generally, in the United States, the village is thought to be intermediate between the hamlet (a settlement with several families and some form of commerce but not more than 50 people) and the town (generally over 1,000 people).

Dealing with the original and evolution of village, it states that -

the village is the typical form of rural settlement in most of the world - in Europe (except for Great Britain) in Asia, in Africa, and in much of South America.... It often seems to be the result of the settlement of lands that previously were only thinly occupied by indigenous populations, but probably also derives from the emergence of clear-cut private proprietorship of land. In much a Europe and in many other areas of the world, communal land ownership prevailed in the past, and this property arrangement was one basis for the village form of rural settlement, the community being set amid the village and grazing lands.

After having taken great pains, their Lordships said that needs of the people change with the development in ecologic, scientific and technological fields as also with the developments in transport and communication. The concept of self sufficiency and the means, mode and range of self-governance also change. Growth and development being essential in the above said judgment, their Lordships have to say as under :

32...What is more, the units of self-governance at the lower level being interrelated and integrated with those at the higher levels as parts of the whole scheme of administration and development in the State, have to respond to and fall in line with the growth in the size and operation of the units at the higher level to form a coordinated democratic polity and administrative machinery. The concept of grassroot of lowest level administration must, therefore, necessarily change with the advance and progress at other levels, the governing units at all levels have to fit in a pattern, and a scheme for administration both for law and order and economic growth. They have to act as vehicles of overall stability and progress. For that purpose, their constitution and functioning have to be in conformity with the larger social, political and economic goals.

33. Hence there cannot be any immutable social, political economic or organisational concept of village as a self-governing unit. In a developing country like ours, where the population is growing fast, where the society is in ferment on all fronts, where divisive forces of all kinds abound, where the vast majority of

population is illiterate and is the victim of ignorance, superstition, blind faith, biases and prejudices, and is shackled by tradition, and irrational customs and practices, there is an urgent need to evolve means to unite and integrate the society to expose the populace to larger and higher goals, to imbibe in them the wider perspectives and to forge a socially cohesive front for breaking the barriers of race, caste, class, religion and region rather than to pander to the age-old, self-centered physical and mental barriers....

16. Thus, creation of Nagar Panchayat, Bhadson by merging two Gram Panchayats, indeed was the requirement of time.

17. Hence, this Court upholds the notification, Annexure P3 and dismiss the present writ petition, with no order as to costs.