
(2014) 08 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15394 of 2014

Gram Panchayat Kalawar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 39 — Haryana Panchayati Raj Act, 1994 - Section 7, 7(3A) — Punjab Village Common Lands (Regulation) Act, 1961 - Section 5(1)

Citation : (2015) 3 RCR(Civil) 267

Hon'ble Judges : Surya Kant, J;Jaspal Singh, J.

Bench : Division Bench

Advocate : Arvind Singh, Advocate, for the Appellant

Judgement

Surya Kant, J.?The Gram Panchayat of Village Kalawar, Tehsil and District Ambala questions the validity of Rule 31(A)(ii) of Haryana Panchayati Raj Rules, 1995 added vide notification dated 04.06.2014 (Annexure P-9). The said Rule enables apportionment of movable and immovable properties including funds, between the existing and the newly constituted Gram Panchayat in proportion to their population. To appreciate the petitioner's challenge, it deserves mention that originally the Gram Panchayat of village Kalawar comprised villages Chhapra, Kathgarh, Balapur and Danipur. A separate Gram Panchayat of Village Balapur, however, came to be constituted in the year 2005.

2. There arose a dispute between the two Gram Panchayats for the apportionment of movable and immovable properties including the funds available with the existing Gram Panchayat.

3. Such like disputes might have arisen at different places on account of establishment of new Gram Panchayats under the Haryana Panchayati Raj Act, 1994, hence the State of Haryana amended section 7 of Haryana Act 11 of 1994 vide Haryana Panchayati Raj (Amendment) Act, 2013 notified on 10.10.2013 and inserted sub-section (3A) which reads as under:

"(3A) Where any area is excluded from or included in any sabha area under sub-section (3), the assets and liabilities attached with such sabha area shall be apportioned by the prescribed authority in such manner, as may be specified."

4. With a view to give effect to Section 7(3A) reproduced above, the Haryana Panchayati Raj Rules, 1995 have also been amended vide notification dated 04.06.2014, inserting the following Rule 31A:-

"31A Apportionment of assets and liabilities:

Section 7 - (1) For the purposes of sub-section (3A) of Section 7, the assets and liabilities shall be apportioned by the concerned Deputy Commissioner as under:-

(i) all immovable properties situated within the revenue estate or sabha area of a particular Gram Panchayat, shall vest in that Gram Panchayat;

(ii) other movable and immovable properties, not within the revenue estate or sabha area of a particular Gram Panchayat including funds, shall be apportioned between the existing and the newly constituted Gram Panchayat in proportion to their population;

(iii) the assets and liabilities, not dealt under clauses (i) and (ii) above, shall be apportioned in the manner agreed upon and in case there is no such agreement within a period of one year from the date of bifurcation of sabha areas, the Deputy Commissioner shall be competent to determine such assets and liabilities, as he may deem fit."

(emphasis applied)

5. The petitioner-Gram Panchayat assails clause (ii) of Rule 31A, so far as it enables the apportionment of movable and immovable properties including funds amongst newly constituted Gram Panchayats in proportion to their population.

6. Many fold contentions are raised on behalf of petitioner-Gram Panchayat. Firstly, it is urged that the impugned Rule contradicts the first proviso to Section 5(1) of the Punjab Village Common Lands (Regulation) Act, 1961, according to which the Shamilat deh of each village has to be utilised and disposed of, by the Panchayat only for the "benefit of the inhabitants of that village". Contrarily, the impugned rule allows apportionment of the funds and immovable properties for the benefit of inhabitants of an all together different village.

Secondly, the shamilat deh consists of self-contributed land/properties of the proprietors/right-holders of the village and they alone are entitled to reap its fruits and no part thereof can be transferred directly or indirectly in favour of newly constituted Gram Panchayat of a different village like respondent No. 4, whose inhabitants are migrant labourers or landless people.

7. Thirdly, the impugned notification dated 04.06.2014 has been issued in violation of principles of natural justice as the objections (Annexure P-7) submitted by the petitioner-Gram Panchayat though were duly forwarded by the

Block Development & Panchayat Officer, Ambala-I (Annexure P-8) but were neither appropriately considered nor the petitioner-Gram Panchayat was heard before taking the final decision.

8. We have heard learned counsel for the petitioner-Gram Panchayat at some length and gone through the record.

9. In our considered view, none of the contentions merit acceptance. We say so for the reason that the Legislative object of Haryana Panchayati Raj Act is to set up democratic institutions at the grass root level for better administration of rural areas through such institutions of self-governance. The Hon'ble Supreme Court in *Ranjit Singh and Others Vs. State of Punjab and Others*, while dealing with the validity of rural development laws observed that, "The Scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in landless class on the one hand and a concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. There must be a proper planning of rural economy and conditions and a body like the village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands."

10. The afore-said legislative object of Panchayati Raj Act cannot be achieved without translating the concept of "inclusive growth" into reality which is possible only if the material re-sources meant to raise economic standards or to provide basic amenities to the inhabitants do not remain confined in the hands of a few. The avowed object behind dividing the Gram Sabha area and create new Gram Panchayats is to cater the needs of growing population through smaller units of self-governance. This object would miserably fail if the funds or the source(s) of income continue to vest in the old Panchayat alone. The petitioner's contention, if accepted, will rather be a bonanza for the old Panchayat whose assets would remain intact but the liabilities shall stand reduced due to constitution of a new Gram Panchayat.

11. The first proviso to Section 5(1) of Punjab Village Common Lands (Regulation) Act, is totally alien to the point in issue. We say so firstly for the reason that the said Act deals with the management of shamilat deh and not the affairs of Gram Panchayat; secondly, the said proviso merely creates an embargo against a common Panchayat to use or dispose of the shamilat deh of each village, only for the benefit of inhabitants of that village. It simply prohibits the use of shamilat deh of one village for the benefit of other if there is a common Panchayat. It is in-applicable in a case of apportionment of assets on creation of a new Gram Panchayat.

12. The criteria of distribution of movable and immovable properties including the funds generated from such properties "in proportion to the population of the Gram Panchayat area" appears to be just, fair and reasonable. The constitutional mandate on policy-framework imposes an onerous duty on the State to distribute

natural resources in consonance with principles of equality and public trust and for the welfare of general public. Since the availability of assets and funds has a direct bearing on the development plans of rural area, non-distribution of such assets or funds in proportion to the population would hit the equality clause of Article 14 of the Constitution due to drastic rise or fall in the average per-capita income of inhabitants of the same Gram Sabha only because of bifurcation of their Gram Panchayats.

13. On the other hand, if the funds or assets are distributed with reference to population for whose betterment or welfare such assets exist, it would lead to fair and equitable distribution of community assets amongst all the beneficiaries in conformity with the constitutional goal envisaged in Article 39 of our Constitution. The Hon''ble Supreme Court in Maharashtra State Electricity Board Vs. Thane Electric Supply Co. and others, observed that "The idea of nationalisation of a material resource of the community cannot be divorced from the idea of distribution of that resource in the community in a manner which advanced common good."

14. Rule 31A essentially gives effect to a public policy. This court would be reluctant to interfere with unless it runs down any constitutional mandate or is directly in conflict with the mandate of a statute. The Hon''ble Supreme Court in In Re: Special Reference No. 1 of 2012, has said that "Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution." No such lacuna having been pointed out or found, we are inclined to uphold the subject rule.

15. So far as the petitioner-Gram Panchayat's grievance against non-observance of principles of natural justice is concerned, it may be noticed that its objections were forwarded by the Block Development and Panchayat Officer, Ambala-I on 27.01.2014 while the amended Rule(s) were notified on 04.06.2014. It can, thus, be safely inferred that the competent authority did consider those objections before the publication of notification.

16. However, if the petitioner's objections have actually gone un-noticed, in that case, even post-decisional hearing can be a substantial compliance of the rules of fair and just play. Suffice it would be to direct the State Government to afford an opportunity of hearing to the representative of the petitioner-Gram Panchayat and consider its view point. If there is any merit found in those objections. The State Govt., shall be required to give effect to the consequential decision by way of an appropriate notification.

17. For the afore-said purpose, we direct the Principal Secretary, Department of

Development and Panchayat, Haryana to communicate the decision, if any, already taken on the objections submitted by the petitioner-Gram Panchayat or pass an appropriate order in the light of observations and directions issued hereinabove.

18. Needful shall be done within two months.

19. Since the order passed by Deputy Commissioner under Rule 31A is appealable, the petitioner-Gram Panchayat shall be at liberty to impugn the same before the appellate authority and the observations made in this order shall have no effect on the merits of its appeal. Dismissed with liberty afore-mentioned.