

(2020) 06 CHH CK 0035
In the Chhattisgarh High Court
Case No : WPPIL No. 99 Of 2019

Hidma Ram And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 01-06-2020

Acts Referred:

Panchayat (Extension To The Scheduled Areas) Act, 1996 — Section 4(a), 4(b)
Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 3, 125, 126, 129A, 129B,
129C, 129D, 129E

Citation : (2020) 06 CHH CK 0035

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Kishore Narayan, Vikram Sharma

Final Decision : Dismissed

Judgement

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Parth Prateem Sahu, J

1. This writ petition in the shape of 'public interest litigation' has been filed by the petitioners, who are residents of village Badegodra, Tahsil

Katekalyan, District Dantewada, opposing creation of new gram panchayat in the name of 'Panknachuwa' out of existing Gram Panchayat Badegudra

and seeking quashment of Notification dated 18.10.2019 (Annexure P-1) issued by respondent No.2.

2. Prayer sought for in the relief clause of writ petition reads thus;-

10.1. That, the Hon'ble Court may kindly be pleased to issue a writ of mandamus or any other appropriate writ quashing the notification dated

18.10.2019 (Annexure P/1) and further declare that the division of Gram Panchayat namely Badegudra and Panknachuwa is illegal, in the interest of

justice.

10.2. Any other relief which this Hon'ble Court may deem and proper in the present circumstances of the case.

3. Case of the petitioners, in brief, is that creation of a new gram panchayat 'Panknachuwa' after delimitation of existing Gram Panchayat Badegudra

has not been done in accordance with the procedure prescribed i.e. without calling upon the villagers of village Badegudra to submit objection and

without making announcement (equknh) in the village by beating drums. Further case of petitioners is that village Badegudra is situated in the

'scheduled area' notified under the Fifth Schedule of the Constitution of India and as such, the provisions of the Panchayat (Extension to the Scheduled

Areas) Act, 1996 (for short 'the Act of 1996') are applicable to the present case. As per Section 4 (a) of the Act of 1996, village habitation, hamlets

are required to be managed as per tradition & custom and as per Section 4 (d), the Gram Sabha is competent to safeguard and preserve the custom &

tradition of the people, their cultural identity, community resources and the customary mode of dispute resolution. In view of provisions of the Act of

1996, respondent No.2 has no authority under the law to issue Annexure P-1.

During the pendency of writ petition, the petitioners have filed an additional affidavit dated 26.11.2019 stating that in view of the provision of Sections

3 & 129-B of the CG Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993'), there shall be a notification in the name of the Governor for

specifying a village and in the present case, no such notification has been issued. The Gram Sabha was not constituted. This being the position, the

holding of elections for Gram Panchayat Panknachuwa or member of Janpad Panchayat is illegal.

On the last date of hearing, the petitioners have filed an amendment application seeking to add averments with regard to the power of the Collector to

notify a village under Section 129B of the Adhiniyam, 1993. They have also sought to add and incorporate a prayer for quashing of Notification dated

16.10.2019.

4. Case of the respondent State, as pleaded, is that respondent No.2 in exercise of powers under Section 129B of the Adhiniyam, 1993 issued

Notification dated 16.10.2019 notifying / specifying the 'villages'. The petitioners instead of seeking quashment of Notification dated 16.10.2019, have

sought for quashing of Notification dated 18.10.2019 issued under Section 129E of the Adhiniyam, 1993 read with Rule 5 of the Chhattisgarh

Panchayat Election Rules, 1995 (henceforth 'the Rules of 1995') for reservation of seats. Further case of the respondent State is that in view of the

provisions of the Act of 1996, the Legislature had introduced Chapter XIV-A in the Adhiniyam, 1993 in which special provisions was made for

panchayats in the scheduled areas. Section 129A deals with constitution of village and Gram Sabha and holding of Gram Sabha, which is in

consonance with the Act of 1996. A preliminary Notification was published on 5.10.2019 by respondent No.2 calling upon the villagers to submit their

objection, if any, before the Sub-Divisional Officer (R) within one week. Upon issuance of preliminary notification, the objection and demand both

have been received with regard to formation/creation of new Gram Panchayat in the name of 'Panknachuwa' out of existing Gram Panchayat

Badegurda. After deciding the objections raised against creation of a new Gram Panchayat, existing Gram Panchayat Badegurda has been divided

into two gram panchayats namely Gram Panchayat Badegurda and Gram Panchayat Panknachuwa, as per provisions of Section 129B of the

Adhiniyam, 1993. It is also the stand of respondent State that constitution of a 'village' is a legislative function and therefore there is no requirement of

giving opportunity of hearing or calling for objection. In support of aforementioned submissions, reliance is placed on the judgment of Hon'ble Supreme

Court delivered in the matter of Sundarja Kanhaiyalal Bhatija Vs. Collector Maharashtra reported in AIR 1990 SC 26;1 judgment of the MP High

Court in the matter of Rajdhar Singh v. State of MP reported in 1985 MPLJ 152 and judgment dated 5.12.2019 passed by this Court in WPC

No.3900/2019 & other connected cases.

5. Submission of learned counsel for petitioners is that the provisions of the Adhiniyam, 1993 are not applicable to the instant case for the reason that

village Badegudra is situated in the 'scheduled area' as notified in the Fifth Schedule of the Constitution of India. By referring to Section 4 (a) & (b) of

the Act of 1996, he contended that existing Gram Panchayat is competent to safeguard & preserve custom and tradition and therefore the Collector

could not have drawn proceeding for creation of a new Gram Panchayat in the name of 'Panknachuwa' from the existing Gram Panchayat

Badegudra. Other submission made by learned counsel for petitioners is to the effect that before creating a new village panchayat after delimitation of existing gram panchayat, neither any announcement/notice was issued, nor meeting of Gram Sabha was held. Even when the application has been filed under the Right to Information Act, 2005 demanding copy of resolution of Gram Panchayat, the same has not been provided. Thus, action on the part of the respondent authorities of creating a new village panchayat is contrary to the provisions of the Act of 1996 as also the Adhiniyam, 1993. In support of aforementioned submissions, learned counsel placed his reliance on the decision of Hon'ble Supreme Court in the matter of Orissa Mining Corporation Limited Vs. Ministry of Environment and Forests & ors reported in (2013) 6 SCC 476.

6. Mr. Vikram Sharma, learned counsel for respondent State points out that Section 3 provides for creation of 'village'. For the scheduled areas similar provision has been brought into by way of amendment in Section 129B of the Adhiniyam, 1993. Amendment incorporated in the Adhiniyam, 1993 from Section 129A to 129E came into effect from 5.12.1997 i.e. after coming into force of the Act of 1996. The procedure prescribed for constitution of a 'village panchayat' has been followed and also complied with. The understanding of petitioners about the scheme of creation of new 'village' is not correct. He submits that as creation of village under the provisions of Section 3 or Section 129B of the Adhiniyam, 1993 is a legislative function/ action, therefore, there is no requirement of compliance of the principles of natural justice by calling objection, but even then a preliminary notification was issued and objections raised by the villagers have been considered and decided. He points out that while deciding objections, the authorities have taken into consideration total circumference of existing village panchayat Badegudra, which was about 6-7 kilometres, and the fact that the people residing in village Panknachuwa and nearby areas / locality of village panchayat Badegurda were facing problems in approaching village panchayat headquarters for bringing their ration etc. Village Badegurda itself is situated in the interior area of Tahsil Katekalyan. Apart from this, total population of village Badegurda, as per Census of 2011, has been shown to be 3615, whereas as per norms and scheme of the State Government, total population of a village panchayat concerned should be 1000. Under these circumstances, a new village panchayat in the name of 'Panknachuwa' has been

carved out. It is also pointed out that submission made by learned counsel for petitioners that holding of meeting of gram sabha and issuance of

Notification by the Governor are mandatory else the creation of new village itself will become void, is not correct. Almost identical issue has been

raised in WPC No.3900/2019 and other connected cases and the same have been dismissed by this Court vide order dated 5.12.2019.

7. We have heard learned counsel for respective parties and perused the record.

8. The general provision for notification of a 'village' is envisaged under Section 3 of the Adhiniyam, 1993. Section 129B of the Adhiniyam, 1993,

which is under Chapter XIV-A, deals with special provision for villages in the scheduled areas. Main contention as raised by learned counsel for

petitioners is that no meeting of gram sabha was held before carving out of new village panchayat in the name of 'Panknachuwa'. This issue has been

dealt with by this Court in WPC No.3900/2019 and while taking note of Section 3 & 129-B of the Adhiniyam, 1993 as well as contents of Notification

dated 16.10.2019, which was also subject matter of said writ petition, this Court has held as under:-

28. Learned Advocate General points out that Annexure P-1 Notification itself is quite categorical as it is only in respect of first paragraph, as

mentioned therein, and the situation dealt with in the second paragraph, as to the constitution of 'Gram Sabha', is an incidental, which is still to happen

as clearly discernible from the terminology used. For convenience of reference, we find it appropriate to extract above two paragraphs of Annexure

P-1 Notification as well, as part of this order;-

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29. It is pointed out by the learned Advocate General that the action pursued by the 2nd respondent District Collector in exercise of powers conferred upon him by the Governor, as mentioned already, is with regard to the 'constitution of village' and not with regard to the 'change of headquarters of Gram Panchayat, division, amalgamation or alteration of Gram Panchayat areas', which is the next step to follow, if and when required/necessitated. It is pointed out that if it has to follow, it has to be pursued by issuing a gazette notification, which is still possible and time is still to come by virtue of which, the case projected by the petitioner is rather premature.

30. After hearing both the sides and after going through the provisions, the publication with regard to the instances covered by Section 125 of the Adhiniyam, 1993 has necessarily to be effected in terms of Rule 3 of the Rules of 1994 i.e. by way of gazette notification, and as such, the submission made by the respondent State that no gazette notification is required stands repelled. But, we accept the submission made by the learned Advocate General that such a situation is still to arise and Annexure P-1 Notification, being one issued with reference to Section 129B of the Adhiniyam, 1993, cannot come within the purview of the same. We answer the said part in favour of the respondent/ State.

9. So far as other ground raised by learned counsel for petitioners that there is no notification as mandated under Section 129B of the Adhiniyam, 1993 in the official gazette is concerned, this issue has also been dealt with by this Court in WPC No.3900/19 and held as under:-

31. It is also pointed out by the learned Advocate General that the Rules of 1994 are only with reference to Sections 125 & 126 of the Adhiniyam, 1993 and not with reference to Section 129-B of the Adhiniyam, 1993. However, it has to be noted that Section 129B mandates issuance of a public notification. What is a 'public notification' and could it be said that the public notification always envisages issuance of notification in the Official Gazette as defined under Section 239 of the General Clause Act, is a question put forth by this Court? No enabling material is brought before this Court either by way of any specific Statute / Constitution or by any precedent to hold that it always amounts to a notification in the Official Gazette. This is more so since wherever the notification is to be issued in the Official Gazette, the same is to be stipulated separately. That apart, the alleged

non-issuance of gazette notification is stated as factually incorrect by the learned Advocate General, pointing out that Annexure P-1 Notification has already been notified on 16.10.2019 and it has been published in the Official Gazette on 30.10.2019. Even otherwise, the question to be considered in the instant case is what prejudice has been caused to the petitioner by alleged non-publication of notification in the Official Gazette. It would be said that absence of gazette notification, if any, would have disabled a party to put forth objections/suggestions stating that he has not come across the same. But, in the instant case, the petitioner has admittedly come across the Annexure P-3, draft notification, and he was not aggrieved of the contents and therefore did not submit any objection. Subsequently, the petitioner came across Annexure P-1 dated 16.10.2019, which was in deviation from Annexure P-3, and hence the petitioner approached this Court challenging the same. So, non-publication, even if it be so, in the Official Gazette has not caused any prejudice to the petitioner herein under any circumstance.

32. Another important aspect to be looked into is that the purpose of the notification envisaged under Section 129-B of the Adhiniyam, 1993 apparently differs from the purpose of notification contemplated under Section 125 of the Adhiniyam, 1993. Section 125 Notification is with an intent to give opportunity to all concerned to submit their objections/suggestions and a final order can be passed and notified only after considering the said objections / suggestions. But, Section 129-B of the Adhiniyam, 1993 does not say as to the necessity to issue a preliminary/draft notification inviting objections/suggestions and no such right is created upon anybody nor is there any requirement to consider such objections/suggestions and to have it finalized thereafter, insofar as the 'villages' are concerned. If no objections/suggestions are to be invited/called for and if no right is conferred on anybody to submit any such objections/ suggestions in respect of any instance covered by Section 129-B, the purpose of notification therein is only to make the general public aware as to the course pursued by the Governor / District Collector, as the case may be. In other words, such a notification issued has to be taken as it is and alleged non-publication in the Official Gazette does not make the entire proceeding vitiated in any manner.

33. It is also relevant to note that though Section 129B of the Adhiniyam, 1993 does not stipulate issuance of any preliminary notification inviting

objections/ suggestions, going by the impugned notification produced before this Court, it is seen that such a course was pursued by the respondents

even in respect of Section 129-B (unlike Section 125) dealing with the 'Villages'. It was after considering the objections/suggestions that the

proceedings were finalized. This is though not mandatory requirement but will make the proceeding more transparent in all respects and as such, it

cannot be taken as a tool or ground against the respondents who have issued notification.

10. From the pleadings made by respondent State as well as documents annexed in support thereof, it is apparent that preliminary notification was

issued on 10.10.2019 inviting objections to be submitted before the Sub-Divisional Officer (R) within one week. Application of Sarpanch, Up-Sarpanch

and other villagers for creation of new village panchayat in the name of Pankanchuwa (Loharpara) by including nearby areas known as Babupara,

Kunjaampara, Patelpara, Kaandkipara, Gaytapara & Dhodhapara, has been submitted, letter/application has been addressed to the Collector for

bifurcation of village Badegurda into two parts i.e. Badegurda & Panknachua (Loharpara) and the objection against creation of new village panchayat

in the name of Panknachua was also considered by the Sub-Divisional Officer (R) and the Collector along with objections raised against creation of

other villages of Block Kuankonda and they have recommended for creation of new village panchayat in the name of 'Panknachua'. We do not find any

substance in the grounds raised in writ petition.

11. In view of the above, we hold that the challenge raised against the Notifications dated 16.10.2019 & 18.10.2019 issued by respondent No.2 is not

liable to be interfered with. The petition being devoid of substance is liable to be dismissed and the same is hereby dismissed.