
(2019) 10 RAJ CK 0080

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14359 Of 2019

Jabbar Singh And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 9(3), 101
Constitution Of India, 1950 — Article 14

Citation : (2019) 10 RAJ CK 0080

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Rajesh Joshi, Rohit Mutha, Sunil Beniwal

Final Decision : Allowed

Judgement

By way of the present writ petition, the petitioners have challenged the recommendation of the District Collector whereby the headquarter of Gram Panchayat 'Sriram Nagar' has been recommended to be Magasar.

Narrating the facts briefly, Mr. Rajesh Joshi, learned Senior Counsel argued that by way of notification dated 29.07.2019, the State Government proposed to form a new Gram Panchayat in the name of Sriram Nagar comprising of village Sriram Nagar with a population of 1599 and Magasar having population of 978.

Residents of concerned villages had no objections to such proposal, but Member of Legislative Assembly - Mr. Kishan Ram Vishnoi, however, wrote a letter dated 29.08.2019 to the District Collector, Jodhpur mandating that headquarter of Gram Panchayat Sriram Nagar be kept in village Magasar.

Consequently, the District Collector made the recommendation towing the line of the said MLA and even made a mention of his desire in his recommendation. Petitioners have challenged that such recommendation has been made under the political influence of the local MLA and the Collector has recommended the headquarter of Gram Panchayat 'Sriram Nagar' to be 'Magasar', not on the basis

of administrative exigency.

Learned counsel further argued that the District Collector was required to send the recommendation as per the facts obtaining on the ground and considering the guidelines and circulars issued by the State Government in this regard. Merely because the local MLA wanted headquarter of the Gram Panchayat, Sriram Nagar to be at Magasar, the same could not have been recommended by the District Collector.

Apart from the alleging of political interference, learned Senior Counsel contended that the District Collector is bound by the proposal made, and he cannot make recommendations dehors the proposal, particularly when the State Government never intended to have headquarter of the Gram Panchayat at Magasar as is evident from the proposal of the State Government dated 29.07.2019.

In support of the contention aforesaid, learned Senior Counsel relied upon the judgment of this Court in the case of Ram Singh & ors. Vs. State of Rajasthan & Ors reported in 2010 (1) WLC 724 and contended that since there was no proposal/prior notice to keep the headquarter of 'Sriram Nagar' at 'Magasar', the District Collector could not have made such recommendation.

Mr. Beniwal, learned Additional Advocate General, defending the recommendations made by the District Collector, argued that recommendations are not solely based upon the desire of local MLA, and the same was made after due consideration of relevant factors - namely Sriram Nagar is a terrain full of sand dunes whereas Magasar is having plain land.

Petitioners have denied these facts by way of rejoinder. Heard.

Without going into these not so relevant facts, as to whether the terrain of 'Magasar' is appropriate or 'Sriram Nagar' is appropriate for fixing headquarter of the new Gram Panchayat, let us first examine the basic issue "at which place the office or headquarter of a newly formed Panchayat should situate ? Though no provision has been brought to the notice of this Court about fixation of head office of a Gram Panchayat, but residents of village 'Sriram Nagar' may have a legitimate expectation that the headquarter or office will be in their village. A reading of the proposal reveals that generally Gram Panchayat is proposed in the name of a village out of cluster which is larger in size in terms of population and area (except in exceptional cases). When the proposal was notified, no villager had an occasion to file/lodge objection regarding the headquarter, as everyone might have thought that the headquarter will be at Sriram Nagar.

This Court is of considered opinion that in exercise of delimitation, the respondents cannot change headquarter of the Gram Panchayat, more particularly in the manner sought to be done. Exercise of delimitation is essentially meant for creation of constituency or rationalisation, as deemed necessary for the purpose of better administration of Panchayati Raj Institutions.

Exercise of delimitation is governed by Section 101 of the Rajasthan Panchayati Raj Act, 1994. Creation of Gram Panchayat or change of headquarter or place of office is governed by the provisions of Section 9, particularly by sub-section (3) of Section 9 of the Act. It will not be out of context to reproduce sub-section (3) of Section 9 of the Act, which runs as under :

"(3) The State Government may, at any time, after one month's notice Published in the prescribed manner either on its own motion or at the request of the Panchayat or of the residents of the Panchayat or of the residents of Panchayat Circle, and by notification in the Official Gazette, change the name [or place of office] of any such Panchayat."

As such if the State wants to change the headquarter of Gram Panchayat Sriram Nagar to Magasar - a complete exercise including publication of one month's notice will have to be followed.

That apart a perusal of the above quoted provision clearly shows that name or place of the office of Gram Panchayat can be changed at the request of Gram Panchayat, residents of the Panchayat or by the State at its own motion. Member of Legislative Assembly, may be representing such area has no say in these matters.

In the present case, notice was for constitution of Gram Panchayat Sriram Nagar, hence there was no occasion for the District Collector to make recommendation to shift headquarter of Gram Panchayat from Sriram Nagar to Magasar.

It will be apt to give comparative figures of both the villages :

Population

Area

Sriram Nagar

1599

7548.03 Bigha

Magasar

978

4336.09 Bigha

In terms of population as well as area, 'Sriram Nagar' is larger in size. There was no justifiable reason for the impugned recommendations, particularly when the proposal did not envisage headquarter of newly formed Panchayat 'Sriram Nagar' to be 'Magasar'.

A bare look at the recommendation leaves no room for ambiguity that the District Collector was influenced if not bound by the letter written by the MLA and has lost the objectivity. Impugned recommendations speak loud about the wishes

of the MLA. The recommendations are clearly based on extraneous consideration and thus arbitrary and hence violative of Article 14 of the Constitution of India.

In light of discussions foregoing, the writ petition is allowed. The recommendations made by the District Collector Annex.6, recommending headquarter of Gram Panchayat 'Sriram Nagar' at 'Magasar' is, hereby, quashed and set aside.

As abundant caution, it is clarified that the present order is confined to that part of the recommendation which proposes the headquarter of Gram Panchayat at Magasar. As far as creation of new Gram Panchayat at Sriram Nagar is concerned, the State may proceed in accordance with law.

The stay application is also disposed of.