
(2015) 09 P&H CK 0086
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15594 of 2015 [O&M]

Latif	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 2[xxix], 4(1), 7, 7[1], 8

Citation : (2015) 180 PLR 601 : (2016) 1 RCR(Civil) 196

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

Bench : Division Bench

Advocate : Ashish Aggarwal, Senior Advocate, S.K. Yadav, C.L. Premy and I.P.S. Mangat, for the Appellant; Ashok Singla, Additional AG, H.S. Baidwan, Parminder Singh, Randeep Singh Dhull and Sudhir Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J—This order shall dispose of CWP Nos. 9801, 10780, 10379, 15594, 16268 and 18551 of 2015 as common question of law that arises for consideration in these cases is whether establishment of new Gram Panchayats by the State Government in purported exercise of its powers under Section 7 of the Haryana Panchayati Raj Act, 1994 is valid or the notification(s) bifurcating the existing Gram Sabha areas deserve to be struck down for the alleged non-compliance of executive instructions dated 23rd March, 1999?

2. Since fact situation is at variance in these cases, it is useful to make a brief reference to the facts of each case.

CWP Nos. 15594 of 2015 (Latif v. State of Haryana & Ors.):--

3. The petitioner in this case is a resident of village Sonkh, Tehsil Nuh, District Mewat. He has challenged the notification dated 30th April, 2015 [P-1] dividing the Sabha area of Gram Panchayat Biwan into two Gram Panchayats, namely, Gram Panchayat Biwan and Sonkh. The circular dated 07th May, 2015 [P-2] directing the Deputy Commissioner, Mewat to carry out the Wardbandi of new

Gram Panchayat area before the ensuing Gram Panchayat elections is also assailed.

CWP No. 18551 of 2015 (Hassan & Anr. v. State of Haryana & Ors.):--

4. The petitioners in this case are also residents of village Sonkh who are aggrieved at the same notification and Government circular which are subject matter of challenge in CWP No. 15594 of 2015.

5. Their primary contention is that vide the resolution dated 05th December, 2014 in which the residents of both villages Biwan and Sonkh participated and the majority of them [if clubbed together] opposed the separation of existing Gram Panchayat, there was no legal necessity to constitute a separate Gram Panchayat.

6. The State of Haryana in its written statement has explained that the new Gram Panchayat was established on the recommendations made by the Block Development and Panchayat Officer, Nuh and the Deputy Commissioner, Mewat. Such a bifurcation is well within the statutory parameters contained in the 1994 Act as it is stated that the total population of the village as per 2011 Census was 2692 and it has been divided into two Gram Panchayats with the population of 1735 and 957, respectively. The statute mandates that ordinarily a new Gram Panchayat can be constituted for an area having population not less than 500. The annual income of Rs. 6,35,000/- has also been apportioned between Gram Panchayats Sonkh and Biwan to the tune of Rs. 3,30,000/- and Rs. 3,05,000/- respectively. The shamlat land has also been bifurcated in proportion to the population of each Gram Panchayat area. It is further pointed out that with the apportionment of the assets is in accordance with Rule 31-A of the Haryana Panchayati Raj Rules, 1995 read with Section 7 of the Act and thus the State has exercised its power within the statutory framework.

CWP No. 9801 of 2015 (Mahinder Singh & Ors. v. State of Haryana & Ors.):--

7. The petitioners are residents of village Bras, Tehsil Nissing, District Karnal. They are aggrieved by the notification dated 15.04.2015 [P-11] whereby Sabha area of Gram Panchayat, Brass has been divided into two Gram Panchayats, namely, [i] Gram Panchayat, Brass and [ii] Gram Panchayat, Brass Khurd.

8. The petitioners have two fold grievance. Firstly, they urge that the solitary reason which led to the constitution of a new Gram Panchayat itself is fake and non-existent as Resolution No. 3 dated 06.11.2008 allegedly resolving to create a separate Gram Panchayat, was never ever passed. Secondly, the new Gram Panchayat has been constituted in total disregard to the Government instructions dated 23.03.1999 which inter-alia provide that before establishing a new Gram Panchayat "the geographical, economic situation and situation of development etc. and other facts are necessary to be kept in view". The third and foremost plea taken is that no resolution seeking bifurcation of the Gram Panchayats was passed by the Gram Panchayat, Brass.

9. The Block Development and Panchayat Officer, Nissing as well as the State Government have filed their separate written statements reiterating that the new Gram Panchayat has been constituted strictly within the parameters prescribed under Section 7 of the Act and that the resolution dated 06.11.2008 is inconsequential insofar as the invoking of power by the State Government is concerned. The factual justification for the constitution of a new Gram Panchayat which would indeed cater to the needs of the small nearby hamlets has also been highlighted.

CWP No. 10379 of 2015 (Suresh Kumar & Ors. v. State of Haryana & Ors.):--

10. The petitioners in this case are residents of village Manethi, District Rewari. They have laid challenge to the notification dated 10.04.2015 [P-11] whereby Gram Panchayat of village Manethi has been divided into two Gram Panchayat areas comprising [i] Gram Panchayat Manethi and [ii] Gram Panchayat, Kund. The establishment of new Gram Sabha area of village Kund is assailed on somewhat similar grounds as have been taken in the previous cases, namely, [i] the existing Gram Panchayat has never resolved to seek its bifurcation; [ii] geographical distance between the two villages does not justify establishment of a new Gram Panchayat; [iii] BDPO, Khol in its comments dated 10.02.2015 [P-6] also observed that no separate Gram Panchayat was required to be constituted and [iv] notification constituting the new Gram Sabha area is totally vague.

11. State of Haryana has in its written statement refuted the petitioners' allegations and inter-alia, pointing out that the total population of undivided Gram Panchayat area was 5225, out of which a new Gram Panchayat area of Kund consisting population of 929 has been constituted and the annual income as well as shamlat land would also be apportioned in the same ratio, for which reference has been made to Rule 31-A of the 1995 Rules. It is maintained that the newly constituted Gram Panchayat fulfills the criteria of Section 7 of the Act.

12. Some of the residents of village Kund [respondents No. 9 to 19] have joined these proceedings through their counsel - Mr. Arvind Singh to justify the constitution of new Gram Panchayat.

CWP No. 10780 of 2015 [Yoginder Kumar & Ors. v. State of Haryana & Ors.:--

13. The petitioners are residents of village Bhakli, Tehsil Kosli, District Rewari. Their grievance is against the notings [P-5] and consequential notification dated 08.05.2015 resulting into establishment of new Gram Panchayat of Bhakli-II out of the original Sabha area of Gram Panchayat, Bhakli. The petitioners have reiterated that [i] there is no resolution passed by the Gram Panchayat seeking constitution of a separate Gram Panchayat; [ii] the impugned notification is totally vague in defining the geographical limits of new Gram Panchayat; [iii] the new Gram Panchayat has been set up with unworkable conditions as the revenue estate of original Gram Panchayat area is surrounding the newly constituted Gram Sabha area and that [iv] the government instructions dated 23.03.1999 have not been followed while establishing the new Gram Panchayat.

14. A pointed reference is made to the office notings from the State Government record [P-4 and P-5] to contend that there were deficiencies like [i] no resolution by the existing Gram Panchayat and [ii] non-availability of exact figure of population as per 2011 Census, for which the Deputy Commissioner, Rewari was asked to send the requisite information. However, without awaiting for the same the matter was put up before the Minister In-charge who acted in a great haste and decided to constitute the new Gram Panchayat area.

15. State of Haryana has averred in its written statement that the total population of undivided area was 15338, with an annual income of Rs. 26,76,067/-. The new Gram Panchayat, Bhakli-II comprises the population of 5368 and income and shamlat land have also been apportioned accordingly. As regard to the alleged anomaly in "geographical location" of the new Gram Panchayat area, it is pointed out that in view of Rule 31-A of the 1995 Rules, if both the Gram Panchayats would not mutually apportion their land/area etc., the Deputy Commissioner will do the needful and shall ensure that there is no overlapping of the geographical areas of two Gram Panchayats.

CWP No. 16268 of 2015 [Dilbag Singh & Ors. v. State of Haryana & Ors.:--

16. The petitioners are residents of village Ballah, Tehsil Assand, District Karnal. They assail the notification dated 15.04.2015 [P-3] whereby Sabha Area of Gram Panchayat, Ballah has been divided into two Gram Panchayats, namely, the existing Gram Panchayat as well as the new Gram Panchayat of Manpura. The grounds taken by the petitioners are the same as pleaded by other writ-petitioners. It is alleged that the Government has acted in extreme haste at the instance of an individual who alone made a representation for the bifurcation of existing Gram Panchayat.

17. The State Government has reiterated that its decision is fully justified in public interest.

18. We have heard learned counsel for the parties at a considerable length and gone through the record.

19. There is no gainsaying that the addition of Part-IX in our Constitution has recognised Gram Panchayat as the first Institution of democracy at the grass-root level. The composition, tenure, qualifications, dis-qualifications from being elected, powers and responsibilities of a Gram Panchayat thus ought to be consistent with the mandate contained in Part-IX.

20. Article 243[g] defines a "village" to mean "...a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified". Similarly, Article 243-B, elaborates upon the Constitution of Panchayats and states, "...there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part, and (ii) Notwithstanding anything in clause (i) Panchayats at the intermediate level may not be constituted in a State

having population not exceeding twenty lakhs".

21. Following the constitutional command, the State Legislature has enacted the Haryana Panchayati Raj Act, 1994. Its Section 2[xxix], [xxx] and [xiii] define the expressions "Gram Panchayat", "Gram Sabha" and "Panchayat Area" to the following effect:--

"[xxix] "Gram Panchayat" means the Panchayat constituted at village level under this Act.

[xxx] "Gram Sabha" means a body consisting of persons registered as voters in the electoral rolls of a village comprised within the area of the Panchayat at the village level;

[xlii] "Panchayat area" means the territorial area of a Gram Panchayat."

22. Section 7 of the Act deals with the demarcation of a Sabha area and it reads as follows:

"7. (1) The Government may by notification, declare any village or a part of a village or group of contiguous villages with a population of not less than five hundred to constitute one or more sabha areas :

Provided that Government may in exceptional cases, by reasons to be recorded in writing, relax the limit of population of 500 :

Provided further that neither the whole or any part of a -

(a) municipality constituted under the Haryana Municipal Act, 1973; Duration of sabha area.

(b) cantonment, shall be included in a sabha area unless the majority of voters in any municipality desire the establishment of a Gram Panchayat in which case the assets and liabilities, if any, of the municipality shall vest in the Gram Panchayat and the municipality shall cease to exist.

(2) The population shall be ascertained on basis of last preceding decennial census of which the relevant figures have been published.

(3) Government may, by notification, include an area in or exclude any area from the sabha area.

(4) If the whole of the sabha area is included in a municipality or a cantonment, the Gram Panchayat shall cease to exist and the assets and liabilities of it shall vest in the municipality or cantonment, as the case may be.

(5) If the whole of the sabha area is included in the Faridabad Complex under the Faridabad Complex (Regulation and Development) Act, 1971, the Gram Panchayat shall cease to exist and its assets and liabilities shall vest in the Faridabad Complex."

23. Thus the Government is empowered to declare any village or a part of a

village or group of contiguous villages with a population of not less than five hundred to constitute one or more sabha areas and the population shall be ascertained on the basis of the duly published preceding decennial census. Section 8 of the Act thereafter provides that:---

"8. Establishment and constitution of Gram Panchayat- [1] The Government may, by notification, establish a Gram Panchayat by name in every sabha area.

[2] Every Gram Panchayat shall consist of:--

[a] Sarpanch who shall be elected by the Gram Sabha from amongst its voter, by secret ballot;

[b] six or twenty Panches from Wards in a Panchayat area in the manner prescribed.

[3] All the above seats referred to in clause [b] of subsection [2] shall be filled in by persons chosen by direct election from the wards in the Panchayat area and for this purpose each Panchayat area shall be divided into wards in such manner that the ratio between the population of each ward and the number of the seats of Panches allotted to it shall, so far as possible, be the same throughout the Panchayat area."

24. That the affairs of a village as enumerated in Part-IX of the Constitution shall be managed by a Gram Panchayat, is the constitutional mandate. Any village having a population of not less than 500 can be declared as a "Sabha Area" by the State Government in exercise of its powers under Section 7[1] of the 1994 Act save that the total population shall be ascertained on the basis of the previous census. No other condition has been expressly prescribed by the 1994 Act for the constitution of a Sabha area. That every Sabha area will have a Gram Panchayat by the name of that Sabha area is the legislative policy discernible from Section 8 of the Act.

25. The petitioners have placed too much reliance on the government instructions dated 23.03.1999, hence it is necessary to extract the relevant part referred to by them. It reads as follows:--

"..... Under sub-Section [1] of Section 7 of the Haryana Panchayati Raj Act, 1994, a minimum population of 500 can be declared to be a Sabha area. But keeping in view the proviso, the Government in exceptional cases can relax the conditions. While establishing a Gram Panchayat the geographical, economic situation and the situation of development etc. and other facts are necessary to be kept in view.

Keeping in view the above, the instructions issued vide letter No. E-3-95/2965-80 dated 18.1.95 are withdrawn. Now it has been decided that each Resolution shall be considered keeping in view the provisions of Section 7 of the Haryana Panchayati Raj Act, 1994 and the aforesaid circumstances.

Hence in future, all the resolutions be forwarded to the Director Panchayat

Haryana keeping in view the amended instructions. The facts and circumstances of each individual resolution after consideration has been prepared in one proforma and the necessary information in accordance thereof is required to be given. This proforma is not exhaustive and is only illustrative. Thus, the Deputy Commissioner should forward the Resolution keeping in view the above facts and circumstances to the Director, Panchayat, Haryana.

If in special circumstances, a Gram Panchayat is established having population of less than 500, then these special circumstances should also be specified".

(emphasis applied)

26. A careful reading of these instructions which have been statedly issued in exercise of powers under Section 7[1] of the 1994 Act reveals that the Deputy Commissioners while recommending the case for establishment of a new Gram Panchayat area are expected to keep in view the "geographical, economic situation and situation of the development etc. and other facts...".

27. The petitioners' contention that these instructions are supplemental to the statutory conditions prescribed by Section 7 of the 1994 Act and thus are equally binding even if accepted, the non-observance of these instructions, in our considered view, would not invalidate the powers exercised by the State Government under Section 7[1] as a delegate of the Legislature. It is unequivocally true that the decision making process re: establishment of a Gram Panchayat is founded upon the relevant, reasonable and fair considerations with full objectivity and ideally it must address the issues like [i] geographical location of a proposed Gram Panchayat, [ii] the source of income in the event of bifurcation, [iii] whether development works already undertaken will fall within the Sabha Area of one Gram Panchayat only or would be equally distributed, [iv] whether the rights of non-proprietors and other indigenous class of people living in the rural areas are proposed to be protected etc.

28. Equally true is that every legislative action is presumed to be valid and lawful unless proved otherwise. As can be inferred from the written statements filed by the State Government, the criteria like [i] population of the proposed or newly established Gram Panchayat; [ii] the "shamlat land" holding which will fall to its share; [iii] source of future income; [iv] actual income which would immediately fall to the share of the new Gram Panchayat etc. are some of the factors kept in view before issuing the impugned notification. It is, thus, difficult to hold that the guidelines illustrated in the instructions dated 23.03.1999 have not been followed.

29. We hasten to add at this stage that the above-stated executive instructions can not be treated at par with Section 7 of the 1994 Act. The non-compliance or deviation from the statutory conditions, might invite the annulment of State action but it may not happen necessarily in the case of non-observance of the executive guidelines which are essentially meant to be kept in view by the authorities in their decision making process re: constitution of a new Gram Panchayat. These instructions do not confer nor can be construed to have

conferred any right on an individual to challenge the constitution of a new Gram Sabha area in exercise of powers under Section 7[1] of the Act.

30. Sukhma Devi and Others Vs. State of Haryana and Others, (2014) 1 RCR(Civil) 873 to contend that opportunity of hearing is required to be provided to the members of the Sabha area before the issuance of notification regarding the action of bifurcation or creating a new Gram Panchayat under the Act, otherwise the action of the Government can be said to be mala fide.

31. In Gram Panchayat Panj Garaian v. State of Punjab 2008 (4) R.C.R.(Civil) 719, this Court held that while constituting a new Gram Sabha by separating from the main village[s], if the factor like physical distance was not taken into consideration along with other relevant facts, such division of the village would strike at its very soul, divide the people, introduce an element of tension and in some cases tend to disturb the peace. The above-cited decision dealt with the provisions of Punjab law which are different from the 1994 Act.

32. Satpal and Others Vs. The State of Haryana and Others, (1992) 102 PLR 389 lays down that the Government can constitute more than one Sabha Area for a village or a group of contiguous villages under the Punjab Gram Panchayat Act (IV of 1952) as the words used in the statute are clear and plain and admit only one meaning and the one Sabha Area in one revenue estate is not a condition precedent.

33. In Karnail Singh and Another Vs. Darshan Singh and Others, (1995) 110 PLR 603 : (1995) 1 SCALE 86 : (1995) 1 SCC 760 Supp : (1994) 6 SCR 700 Supp : (1995) 1 UJ 613 the Apex Court ruled that where in a revenue estate, the population is more than 500 and there is no prohibition under Section 4(1) for the Government to exercise its power for declaring one or more than one Sabha areas within one revenue estate, the plea that there cannot be more than one Sabha areas within one revenue estate, is not tenable under Section 4(1) of Punjab Gram Panchayat Act, 1952 and Court cannot substitute its own view to that of the Government taken in exercise of its administrative powers.

34. Similarly, in Sushil Kumar and others v. The State of Haryana and others Civil Writ Petition No. 12404 of 2015 decided on July 03, 2015, this Court held that the total population of the three Gram Panchayat areas is more than 500 each. As regard to the alleged non-availability of the Gram Panchayat land in village Darwa for its financial viability, such like policy decisions do not call for any interference by a Writ Court. The availability of agricultural land is not the only source of Gram Panchayat income.

35. In Gram Panchayat Kalawar v. State of Haryana and ors CWP No. 15394 of 2014 decided on August 05, 2014, the validity of Rule 31(A)(ii) of Haryana Panchayati Raj Rules, 1995 which enables apportionment of movable and immovable properties including funds, between the existing and the newly constituted Gram Panchayat in proportion to their population and Insertion of Section 3A under the Haryana Act 11 of 1994 vide Haryana Panchayati Raj

(Amendment) Act, 2013 notified on 10.10.2013 was unsuccessfully challenged.

36. This would leave us to deal with the last plea, namely, whether the absence of a resolution by the existing Gram Panchayat or Gram Sabha would invalidate the decision taken by State Government under Section 7[1] of the Act? The afore-said plea appears to be totally misdirected and misconceived and must fail. We say so for the reasons that firstly Section 7[1] does not contemplate such a requirement. Secondly, the instructions dated 23.03.1999 also nowhere suggest that in the absence of such a resolution, the proposal to constitute a new Gram Panchayat shall not be forwarded. Thirdly, the constitution of a new Gram Panchayat is a legislative function to be exercised in public interest to speed up the development and welfare activities. If a Gram Panchayat, for some reasons does not resolve to its bifurcation, it can not per se be an impediment against the exercise of powers by the State Government under Section 7 of the 1994 Act.

37. The plea that the "will" of people ought to have been ascertained though appears attractive but lacks the substance. Every State is under the constitutional obligation to take measures for social, political and economic independence of the people. The creation of more and more democratic institutions fulfills the legitimate expectations of those who have remained unrepresented for decades. Similarly, smaller geographical units oftenly get expeditious development. A State action in furtherance of such like goal(s) would not call for any interference by a writ Court save in blatant violation of constitutional or statutory conditions. No such case has been made out by the petitioners.

38. Dismissed.