
(1992) 03 P&H CK 0090
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 729 of 1992

Raghubir Singh and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 17-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Gram Panchayat (Amendment) Act, 1953 — Section 4, 4(1), 4(2), 5, 5(1)
Punjab Gram Panchayat Act, 1952 — Section 3

Citation : AIR 1993 P&H 227

Hon'ble Judges : B.C. Varma, C.J.; V.K. Jhanji, J

Bench : Division Bench

Advocate : Mr. Anil Khetarpal, for the Appellant; Mr. Arun Nehra, Addl. A.G., Mr. R.S. Cheema and Mr. A.S. Virk, for the Respondent

Judgement

1. This will dispose of Civil Writ Petitions Nos. 729 of 1992 and 1380 of 1992.
2. In Civil Writ Petition No. 729 of 1992 a challenge is being made to the notification dated 18th of Dec., 1991 (Annexure P-3) issued by the State of Haryana, constituting two Sabha areas, thereby establishing two Gram Panchayats out of one estate of village Datchar.
3. The main grievance of the petitioners, who claim to be the residents of village Datchar in this writ petition is that they have been denied the right to vote, for electing office-bearers of the Panchayat of village" Datchar, by way of impugned notification. They further claim that they have been casting their votes for the purpose of elections in village Datchar and because of impugned notification, the respondent-State created a separate Sabha area by the name of Gobind-garh without there being any revenue estate number or any village by the name of village Gobindgarh.
4. The petition is being resisted not only by respondents Nos. 1 to 3 but also by Gram Panchayat, Datchar, through its Sarpanch, Parkash Singh, who was elected as Sarpanch of Gram Panchayat of village Datchar, the election of

which was held on 24th of December, 1991. Respondents Nos. 1 to 3 and 4 in their separate written statements have stated that the Government was well within its statutory powers to establish a new Gram Panchayat in the name of Gobindgarh. They have further stated that the petitioners have a right to cast their votes in connection with the election of Gram Panchayat, Gobindgarh, as after the bifurcation of village Datchar and establishment of a new Gram Panchayat under the name of village Gobindgarh, they fall within the territorial jurisdiction of Gram Panchayat, Gobindgarh.

5. Learned Counsel for the petitioners contended that in view of definition of "village" as defined u/s 3(q) of the Punjab Gram Panchayat Act, 1952, as applicable to the State of Haryana (briefly "the Act"), the elections can be held for Panchayat of the village after a separate village has been created and it has been assigned a separate revenue estate number. He further contended that no separate revenue estate number has been assigned to the newly created Sabha area of Gobindgarh and, therefore, the notification is totally without jurisdiction and is liable to be quashed, as being against the provisions of the Act. In support of his arguments, he relied upon a Division Bench judgment of this Court reported as *The State of Haryana v. Daya Ram* 1985 (87) PLR 97.

6. In order to appreciate the arguments of learned Counsel for the petitioners, it is necessary to notice the relevant provisions of the Act, which are as under:--

Section 3:

"(mmm) "Sabha area" means an area declared to be Sabha area u/s 4;

(q) "Village" means any local area, recorded as a revenue estate in the revenue records of the district in which it is situated;"

Section 4:

Demarcation of Sabha areas --

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

Proviso: xxx xxx xxx (2) Government may, by notification, include any area or exclude any area from the Sabha area.

(3) xxx xxx xxx"

Section 5:

Establishment and Constitution of Gram Panchayat:

"(1) Government may, by notification, establish a Gram Panchayat by name in every Sabha areas."

(2) to (4) xxx xxx xxx

Sub-section (I) of Section 4 of the Act provides that for constituting Gram Sabha, it is necessary that there should be a village having population of five hundred or more. Under sub-section (2) of Section 4 of the Act, the Government is empowered to issue a notification to include or exclude any area from the Sabha area. Sub-section (I) of Section 5 of the Act provides for the setting up of a Gram Panchayat by name in every Sabha area, by issuing a notification.

7. A combined reading of Sections 4 and 5 of the Act would show that the State Government is competent to include or exclude by notification, any village or group of contiguous villages, to constitute one or more Sabha area, and is further empowered to establish a Gram Panchayat in every Sabha area. Thus, under these provisions, the Government is competent to create more than one Gram Sabha area in a village. It is not necessary as argued by the learned Counsel for the petitioners that before a notification for constituting a Gram Panchayat of Sabha area is issued, it must have a separate village with a separate revenue estate number. It is not disputed before us that the Sabha area of Gobindgarh now carved out of village Datchar, does bear the revenue estate number and therefore, the impugned notification cannot be said to be against the provisions of the Act. While considering a similar matter, the Division Bench of this Court in its judgment reported as *Gram Panchayat, Bhorakh Vs. Amrik Singh and others*,), relying upon the earlier Division Bench judgment of this Court in *Civil Writ Petition No. 10003 of 1988 (Jogi Ram v. The State of Haryana)*, concluded that the separate revenue estate number is not a condition precedent for establishment of new Gram Panchayat for a village having no separate revenue estate number. *Daya Ram's case* (supra) relied upon by the learned Counsel for the petitioners was rightly distinguished by Division Bench of this Court in *Amrik Singh's case* (supra) as in *Daya Ram's case* (supra), the only question under consideration was as to whether a Gram Sabha can be created with respect to village having no revenue estate number, and therefore, notification in that case was quashed. However, we find that in the present case, this is not the case because the Sabha area of Gobindgarh carved out of village Datchar does bear the revenue estate number.

8. We also find no merit in the argument of learned Counsel for the petitioners that action of the Government in issuing the notification is arbitrary and was for oblique motives. In support of this argument, he highlighted that though the impugned notification was issued on 18th of December, 1991, yet the election programme for holding the elections of village Gobindgarh, was published on 16th December, 1991 (Annex-ure P-5). We find from the written statement of respondent No. 4 that the process of carving out a separate Sabha area of Gobindgarh was started as far back as 7th of March, 1988, when as many as 21 voters of Gram Panchayat, Datchar, filed an application before the Deputy Commissioner, Karnal, stating therein that village Gobindgarh which is 3 kms. away from village Datchar, has about 70 houses with a population of six hundred, and about four hundred voters. Five of the petitioners were also applicants therein. On 5th of April, 1988, the Gram Panchayat, Datchar, passed a resolution

to the effect that the Panchayat has no objection if a separate Panchayat for village Gobindgarh, is created. A similar recommendation was also made by the Block Development and Panchayat Officer, to the Deputy Commissioner, Karnal, who in turn, recommended the same to the Director, Panchayats, Haryana, Chandigarh. This process took some considerable time: before the notification for the purpose could be issued. Simply because, the election programme was published on 16th of December, 1991, in anticipation of the impugned notification, is not enough to conclude that the impugned notification is arbitrary or was issued with oblique motives. The petitioners are not being denied of their right to caste votes. All the voters falling within the territorial jurisdiction of Gobindgarh shall be entitled to vote as and when elections of the Gram Panchayat, Gobindgarh, take place.

9. For the aforesaid reasons, Civil Writ Petition No. 729 of 1992 is dismissed with no order as to costs.

10. The petitioner in Civil Writ Petition No. 1380 of 1992, is seeking a writ in the nature of mandamus for a direction to the respondents to hold elections to the Panchayat of village Gobindgarh, which was created for the first time out of village Datchar, vide notification dated 18th of December, 1991. The elections to the Gram Panchayat of village Gobindgarh were to be held on 30th of December, 1991, but were postponed because of the orders of respondent No. 2.

10A. It has been stated in the written statement filed on behalf of the respondents through Sukhbir Singh, District Development and Panchayat Officer, Karnal, that elections were postponed because some of the residents of village Gobindgarh filed a civil suit for permanent injunction in the Civil Court at Karnal, and obtained a stay order on 28th of December, 1991, to the effect that a number of voters who had their votes in the voters' list maintained for village Datchar, should not be restrained from casting their votes in village Gobindgarh on the ground that they are the residents of village Gobindgarh. In the light of aforesaid stay order, and because of pendency of Civil Writ Petition No. 729 of 1992, the elections were post-poned. It has also been stated that the elections to Gram Panchayat, "Gobindgarh, shall be held after decision in Civil Writ Petition No. 729 of 1992.

11. Since there, is no impediment left in holding the elections to the Gram Panchayat of village Gobindgarh because of decision in- C.W.P. No. 729 of 1992, we expect that the respondents shall hold the elections to Gram Panchayat, Gobindgarh, without any further delay. With this observation, C.W.P. No. 1380 of 1992 is disposed of, with no order as to costs.

12. Order accordingly.