
(1994) 04 MP CK 0009
In the Madhya Pradesh High Court
Case No : M.P. No. 400 of 1994

Rajdhar Singh

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 13-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Panchayat Raj Adhiniyam, 1994 — Section 12, 3

Citation : (1994) 1 MPJR 246 : (1995) 40 MPLJ 152 : (1995) MPLJ 152

Hon'ble Judges : T.S. Doabia, J; S.K. Chawla, J

Bench : Division Bench

Advocate : C.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

In consequence of the mandate given by the Parliament by enacting Constitution 73rd Amendment Act, the State Legislature proceeded to bring M. P. Panchayat Raj Adhiniyam of 1993 (hereinafter referred to as the "Adhiniyam") on the statute book. As u/s 3 of the Adhiniyam, a Unit of Local Government described as "village" which could consist of one or more villages was to be created, a preliminary notification, copy whereof is Annexure P/1 with this petition was published. Objections were invited and these were to be filed within a period of five days. Objections were filed vide Annexure P/3. The main objection which was taken in the objection petition was that the headquarters of the Village Panchayat should be located at village Sahodari and a stipulation to the contrary in locating the same at Madkheda is not appropriate. Further steps with a view to constitute the village as contemplated by Section 3 of the Adhiniyam were taken and final notification Annexure P/4-A was issued on 9th March, 1994. A notification Annexure P/4 u/s 12 of the Adhiniyam with a view to constitute the wards was issued on 16th March, 1994. There are five wards in Madkheda and eleven in Sahodari.

The grievance of the petitioner is that the headquarters of the Gram Panchayat should be located at Sahodari and not at Madkheda. A further submission which was not part of objections Annexure P/3 is that as per guidelines contained in Annexure P/2 there should have been an independent Gram Panchayat for Sahodari as it has a population of more than 1000.

We have examined the submissions made by the petitioner and are of the view that these cannot be accepted. The relevant statutory provisions which deal with the creation of "village" and "Gram Panchayat" may now be noticed :-

"3. Notification of village.- The Governor shall by public notification specify a village or group of villages to be a village for the purpose of this Act."

XX XX XX XX "10. Establishment of Gram Panchayat, Janpada Panchayat and Zila Panchayat.- (1) There shall be a Gram Panchayat for every village specified as a village for the purposes of this Act u/s 3.

(2) The Governor may by notification, divide a district into blocks. The notification shall specify the name of every such block, its headquarters and the area comprised therein. For every block there shall be a Janapada Panchayat which shall be known by the name of block.

(3) There shall be a Zila Panchayat for every district :

Provided that every Municipal Corporation, municipal council, town area committee, notified area committee or special area development authority established and constituted within the block and district under relevant law for the time being in force shall form a separate administrative unit for the respective areas within their jurisdiction under the relevant law."

xx xx xx xx "12. Division of Gram Panchayat into wards. - Each Gram Panchayat area shall be divided into not less than ten wards as may be determined by the Collector and each ward shall be a single member ward :

Provided that where the population of Gram Panchayat area is more than one thousand it shall be divided into wards in such manner that the total number of wards shall not exceed twenty and the population of each ward shall as far as practicable, be the same through out the block within which the Panchayat area falls :

Provided further that the ratio between the population of the Gram Panchayat area and the number of wards in such Panchayat shall, so far as practicable, be the same throughout the block within which the Panchayat area falls."

The contention of the petitioner that village Sahodari has a better claim for having headquarters is based on the existence of certain facilities which are not there in Madkheda. It is highlighted that there is a primary school, a veterinary hospital and an educational centre located at Sahodari. The petitioner has further stated that this village has an easy access by road. The fact that village Madkheda has a population of 510 and village Sahodari has a population of 1131

has again been highlighted. The prominence of village Sahodari has again been brought out by submitting that village Madkheda has only five wards whereas village Sahodari has eleven wards. It is on the basis of the above criteria the notification dated 9th March, 1994 by which village by the name of "Madkheda" was constituted by grouping three villages including village Sahodari has been challenged.

As pointed out above, in the objections preferred vide Annexure P/3, the only prayer made was that the headquarters of the Gram Panchayat should be located at village Sahodari. The claim regarding an independent Panchayat for village Sahodari was never staked.

We have considered the matter and arc of the view that these are matters over which this Court cannot sit over judgment as the State Government in the matter of creating Units of Local Government performs legislative functions. This question was considered by the Supreme Court of *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, In the above case, the Government of Maharashtra issued a draft notification u/s 3(3) of the Bombay Provincial Municipal Corporation Act, 1949 proposing to form Kalyan Corporation suggesting merger of Municipal Areas of Kalyan, Ambarnath, Dombivali and Ulhasnagar. After objections were filed the Government decided to exclude Ulhasnagar from the proposed Corporation. A writ petition was filed in the High Court of Bombay and it was alleged by certain objectors that action of the Government in affording opportunity of being heard only to the residents of Ulhasnagar and not to other objectors was in violation of Article 14 of the Constitution of India. A further plea raised was that the exclusion of Ulhasnagar was unintelligible and incomprehensible. The High Court allowed the writ petition and directed the State Government to give a fresh look to the proposal. On appeal, the Supreme Court reversed the decision given by the Bombay High Court and observed that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative and agreeing with the contention of the appellants concluded that the government performs a legislative function. In this regard, it was further observed that the Courts cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs". The Supreme Court took note of the earlier decisions on the subject and finally concluded in para No. 28 as under :-"

"The principles and precedents thus enjoin us not to support the view taken by the High Court. We may only observe that the Government is expected to act in a way which would make it consistent with the good administration. It is they, and no one else - who must pass judgment on this matter. We must, therefore, leave it to the Government."

The matter was also considered by this Court in the case of *Mukund Das v. State of M.P.* 1993 MPLJ 767 : 1991 JLJ 715. A challenge was made to the legislative competence and constitutionality of the provisions of the M. P. Panchayat Raj

Adhiniyam, 1990 and the Rules made thereunder. After noticing the various decisions given by the Supreme Court including the decision in the case of *Sunderjas Kanyalal Bhathija* (supra) this Court upheld the provisions of the above Adhiniyam and concluded as under :-

"Our conclusion, therefore, is that Section 4 of the Adhiniyam is a conditional legislation containing condition for establishing a Gram Sabha. No prior hearing is necessary as it does not involve any civil consequences. It is also not violative of Article 40 of the Constitution as the Unit of self governance continues to be a village or group of villages....."

In view of the decision of the Supreme Court and the view expressed by this Court in *Mukund Das* (supra), we are of the view that the decision of the respondent authorities in constituting a Gram Panchayat by the name of Madkheda is perfectly in accordance with law. This is a decision over which this Court is not to sit as a Court of appeal and would not substitute its own views. Annexures P/4 and P/4-A having been issued in the exercise of powers which are legislative in character are in accordance with law and this decision calls for no interference. The claim of the petitioner that village Sahodari should have a separate Panchayat is again not sustainable. This was not a matter regarding which any claim was made in the objection Annexure P/3. Again the claim made on the basis of guidelines Annexure P/2 cannot have the effect of overriding statutory provisions which confer legislative functions on the authorities. On the basis of the guidelines contained in Annexure P/2 it has been contended that there should be an independent Gram Panchayat for every village having population exceeding 1000. It was contended that specification of village Sahodari having a population of 1131 persons, not as an independent village but its grouping along with two other villages namely Madkheda and Pipriankheda as a village and that too as village Madkheda by the Governor vide public notification Annexures P/4 and P/4-A was invalid. Suffice it to say that the alleged guidelines contained in Annexure P/2 are addressed to the Collectors of the State whose function is not to notify a "village" in terms of Section 3 by public notification. That is the function of the Governor. Annexure P/2 at the most can be described as Executive Instructions given to the Collectors by the Government in submission of proposals for formation of villages. Such executive instructions could not override the statutory provisions on the subject. The statutory provisions are contained in Section 12 of the Adhiniyam. It is difficult to spell out from that provision that villages exceeding population of 1000 shall be separately notified as an independent village for the purpose of Section 3. The notification has been issued in the exercise of legislative functions by the Governor and it cannot be challenged merely on the ground that it is not in consonance with the Executive Instructions given by the Government to the Collectors. There is no violation of any statutory provision in the issuance of the notification. On this subject we say no more.

We may also take note of another matter. The petitioner claims to be a social

worker and an agriculturist by profession. He has chosen to describe the present controversy as public interest litigation. As to how the limited relief claimed in the petition falls within the purview of public interest litigation has not been elaborated by the petitioner. Hitherto-before public interest litigation has been resorted to with regards to matters which may have wide repercussions and which touch the society at large. Thus, the blinding of prisoners in Bhagalpur Jail led to the filing of public interest litigation and the Supreme Court of India did intervene in the case reported as *Anil Yadav v. State of Bihar* AIR 1982 SC 1098 . Again, in the case of bonded labourers, the Supreme Court of India gave directions in the case reported as *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, In *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, exploitation of child labourers was the cause behind the public interest litigation. Lately, in the case of AIR 1989 348 (SC) the plight of the patients in a mental hospital led to an intervention by the Supreme Court. The above are some of the illustrative cases where public interest litigation was resorted to and relief was granted. This was because the issues involved touch the general public all over the country.

How. the instant controversy falls under the above category has not been demonstrated. This is a local dispute raised by one person. We are of the view that this localised controversy falls outside the purview of public interest litigation.

This petition is, thus without any merit and is dismissed in limine.