
(1991) 05 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6351 of 1991

Ram Chander

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 27-05-1991

Acts Referred:

Citation : (1991) PLJ 581 : (1992) 1 RRR 64

Hon'ble Judges : J.L.Gupta, J

Advocate : G.S. Sandhu, Advocate., Advocates for appearing Parties

Judgement

J.L. Gupta, J.

1. These two Writ Petitions No. 6351 and 7891 of 1988 challenge notification merging the Gram Panchayats of Kalanaur and Isharpur in Tehsil Jagadhari District Ambala.

2. The facts as stated in C.W.P. No. 6351 of 1988 may be noticed. The petitioners are residents of village Isharpur, tehsil Jagadhri, district Ambala. The residents of this village including the petitioners claim to have made a representation to the Government pointing out that no development work was being done in their village and even the income derived from the land in village Isharpur was not being spent in the said village. It was in fact being spent in village Kalanaur. Various other grievances were also raised. It is alleged that the Government sent for a report from the Deputy Commissioner, Ambala. The Block Development and Panchayat Officer, Jagadhri is alleged to have visited the village to verify the facts alleged in the representation and had sent a report to the Government that a separate Gram Panchayat needed to be established in village Isharpur. This report of the Block Development and Panchayat Officer is said to have been endorsed by the Deputy Commissioner, Ambala as well as by the Director of Panchayats, Haryana. As a result, vide notification published in the Haryana Government Gazette of December 22, 1987, the Governor of Haryana in exercise of the powers under Sections 4 and 5 of the Punjab Gram Panchayat Act, 1952 constituted two separate Sabha Areas by the names of Kalanaur and Isharpur.

Each Panchayat was to have five Panches including the Sarpanch. It is further alleged that in the year 1985, land measuring 118 kanals 6 marlas in the revenue estate of village Isharpur was acquired by the Haryana Government for construction of Yamunagar Thermal Power Plant under the Land Acquisition Act, 1894. Out of this land, area measuring 51 Kanals 6 marlas was recorded as in the ownership of Panchayat. The proprietors including the petitioners of village Isharpur are alleged to have made an application before the Collector that land measuring 51 kanals 19 marlas in fact belonged to the proprietors of the village Isharpur and there was also an entry in the column of ownership supporting their claim. On this basis, they claimed that the compensation of an amount of Rs. 2,36,810.38 which had been assessed as price of the said land should be given to them. This claim is alleged to have been contested by the Gram Panchayat, Kalanaur. This dispute is stated to be pending for adjudication in this Court in F.A.O. No. 1 of 1987. It is alleged that the Gram Panchayat, Kalanaur wanted to take away the said amount of money and spend the same for the development and betterment of village Kalanaur. According to the petitioners, it was on account of these reasons and the efforts of respondent No. 4 Jai Chand, an active Lok Dal worker that the Haryana Government issued notification of July 11, 1988 merging Gram Panchayats of Kalanaur and Isharpur, to form the Gram Panchayat of Kalanaur. A copy of this notification has been placed on record as Annexure P1. The notification and the provisions of Section 4 of the Punjab Gram Panchayat Act, 1952 have been challenged as ultra vires of Article 14 of the Constitution of India.

3. A written statement has been filed on behalf of respondents No. 1 and 2. It has been averred that "there was a representation of about 300 persons of Gram Panchayat Isharpur to be merged into Kalanaur. This representation was enquired into by the Block Development and Panchayat Officer, Jagadhri and the Deputy Commissioner, Ambala and on their recommendation the Gram Panchayat Isharpur was merged with Gram Panchayat Kalanaur. The Deputy commissioner had specifically mentioned in his recommendation that the Gram Panchayat Isharpur would not be in position to work independently."

4. I have heard Mr. G.S. Sandhu, Advocate for the petitioners and Messrs H.P. Verma and R.A. Sheoran for the respondents. Mr. Sandhu argued vehemently that the action of the respondents in merging the two Gram Panchayats was absolutely arbitrary and could not be justified on any ground whatsoever. Mr. Sandhu further contended that the merger had been ordered at the instance of respondent No. 4 who was an influential Lok Dal worker and not on the merits of the case. On the other hand, the learned counsel for the respondents submitted that the action had been taken on the receipt of a representation from about 300 residents of village Isharpur and after thorough examination of the matter. The arguments were heard and concluded on May 8, 1991 and the orders were reserved. The learned counsel for the State was directed to produce the records of the case. He appeared before me on May 9, 1991 and stated that the relevant file has not been traced. He produced a report from the Head Assistant stating

that the relevant file was not traceable. This report has been placed on record as Mark A.

5. The whole case of the respondents is stated in paragraph 6 which reads as under :

That the contents of para No. 6 are wrong and denied to the extent that there was no representation of the residents of village Gram Panchayat Kalanur and no enquiry was made by the Block Development and Panchayat Officer and other authorities. There was representation of about 300 persons of the Gram Panchayat Isharpur to be merged into Kalanaur. This representation was enquired into by the Block Development and Panchayat Officer, Jagadhri and the Deputy Commissioner, Ambala and on their recommendation the Gram Panchayat Isharpur was merged with Gram Panchayat Kalanaur. The Deputy Commissioner had specifically mentioned in his recommendation that the Gram Panchayat Isharpur would not be in a position to work independently."

A perusal of the above would show that no details of the allegations made in the representation have been furnished. Even though the representation is said to have been enquired into, yet the findings of the said enquiry have not been disclosed. Even the precise recommendations except that the Gram Panchayat " would not be in a position to work independently" have not been mentioned. The basis for this finding have also not been disclosed. In order to check up the entire matter, I had sent for the record. It has not been produced. In this situation, there is no material whatsoever to justify the action of the respondents. If the relevant record had been possible to find out the detailed factual position and the material on the basis of which the decision had been taken. The failure to produce the record and the absence of the details in the written statement leave me with not alternative except to hold that the action suffers from the vice of arbitrariness.

6. There is another aspect of the matter. The Act is a complete code. It empowers the State Government to take such remedial measures as a situation may demand. If in the opinion of the Government a Gram Panchayat is incompetent to administer its property, the State Government has the power to appoint a person to administer the property. Power to take action or to suspend or supersede a Gram Panchayat is also available to the State Government. The order of merger can only be passed as a last resort. Even if there was material on the basis of which the Deputy Commissioner formed the opinion that the Gram Panchayat Isharpur would not be in a position to work independently, the order of merger could not be the only one in the circumstances of the case.

7. The writ petition is, therefore, allowed and the notification at Annexure P1 is quashed. In the circumstances of the case, the parties are left to bear their own costs.