
(1986) 12 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1178 of 1985

Ravinder Singh and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 10-12-1986

Acts Referred:

Citation : (1987) 2 CurLJ 507 : (1987) PLJ 79 : (1987) 2 PLR 173 : (1987) RRR 552

Hon'ble Judges : S.P.Goyal, J and Pritpal Singh, J

Advocate : H.N. Mehtani, Advocate., Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. These three writ petitions (Nos. 1178, 1254 and 2319 of 1985) are being disposed of together because in all of them the vires of Section 5(4) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (for short 'the Act'), as applicable to the State of Haryana, has been challenged.

2. In order to appreciate the contentions of the petitioners Sections 3 and 5 of the Act need to be noticed. It is provided in Subsection (1) of Section 3 that the Government may constitute Panchayat Samitis in a district either for every tehsil or for every block, declared under Section 2(2) of the Act. It is then prescribed the subsection (3) of Section 3 that if the tehsil or block is delimited after a Panchayat Samiti is constituted the Government may reconstitute the Panchayat Samiti for the redelimited tehsil or block. Section 5(3) was introduced in the Act by the Amending Act No. 9 of 1983 and it reads as under :

"(3) Notwithstanding anything contained in subsection (1), where a Panchayat Samiti is to be reconstituted for a redelimited block and until Members are elected to the reconstituted Panchayat Samiti

(i) It shall consist of Members as were representing the area immediately before redelimitation and subsequently included in the redelimited block.

Provided that if the number of such Members is less than that provided in clauses (a) and (c) of subsection (1), the Government may nominate persons so as to complete the number in accordance with the said clauses; and

(ii) Chairman and ViceChairman of the Panchayat Samiti existing immediately before the reconstitution thereof shall, notwithstanding anything contained in Section 18, vacate their offices and new Chairman and ViceChairman shall be elected by the Members referred to in clause (i), in the manner provided in Section 17."

3. Thereafter the Governor of Haryana exercising the powers under Article 213 (1) of the Constitution of India promulgated the Ordinance No. 8 of 1984 (Annexure P.1) on 5th November, 1984 by which Section 5(4) was inserted in the Act reading as follows:

"5(4) Notwithstanding anything contained in subsections (1) and (3), where a block is redelimited, before the constitution of the Panchayat Samiti for the existing block, the Panchayat Samiti for redelimited block shall consist of elected Members, representing the area before redelimitation which is subsequently included in the redelimited block:

Provided that if the number of such Members is less than that provided in clause (a) of subsection (1), the Government may nominate persons to complete the number mentioned therein."

Later the Legislature replaced this Ordinance by an enactment, namely, Haryana Act No. 6 of 1985. The vires of this new Section 5(4) of the Act has been challenged in these writ petitions.

4. The grounds for challenging the vires of this Section are threefold. Firstly, it is contended that Section 5(4) is in conflict with Section 3(3) and, therefore, runs counter to the object of the original Act. Secondly, the impugned provision is said to have given arbitrary powers of nomination to the Government without laying down any guidelines. Lastly, it is contended that it is a mala fide legislation.

5. The first objection that the impugned Section 5(4) is contrary and in contradiction to Section 3(3) is devoid of merit. Section 3(3) provides for a situation where the tehsil or block is redelimited after a Panchayat Samiti has been constituted. It is prescribed that in such a case the Government may reconstitute a Panchayat Samiti for the redelimited tehsil or block. The new Section 5(4) deals with a different situation altogether. It is applicable to the redelimited block before the constitution of the Panchayat Samiti. It is provided that in such a case the Panchayat Samiti for the redelimited block shall consist of the elected Members representing the area before redelimitation which is subsequently included in the redelimited block. It is, therefore, clear that these two provisions operate in entirely different fields and as such it cannot be said that they are contrary to each other. In such circumstances it is not possible to accept that the newly added Section 5(4) is opposed to the object of the Act.

6. The second objection that Section 5(4) has given arbitrary powers of nomination to the Government, without laying down any guidelines, is also without merit. It is said that the word "persons" mentioned therein has been left vague which gives unlimited and arbitrary powers to the Government to nominate any person of its choice. There is no substance in this contention. The provision regarding the constitution of Panchayat Samitis for a block is Section 5(2) of the Act which reads as under :

"5 (2) Where a Panchayat Samiti is to be constituted for a block, it shall consist of the following Members:

(a) primary Members to be elected in the manner prescribed by the persons as provided hereunder:

(i) sixteen members from the block; one from each zone to be elected from amongst the Panches and Sarpanches of the Gram Panchayats in the zone:

Provided that twentyfive per centum of the total number of the zones in each Panchayat Samiti area shall be reserved for election of members of the Scheduled Castes:

Provided further that such zones shall be reserved by the Government, by rotation after the expiry of the term of the Panchayat Samiti;

(ii) one Members representing the Market Committees in the block, by the Members of such Committees from amongst the producer Members residing within the jurisdiction of the Panchayat Samiti;

(aa) two Members representing the Cooperative Societies within the jurisdiction of the Panchayat Samiti to be nominated by the Government or any other officer who may be authorised in this behalf by the Government:

Provided that if a person ceases to be Member of Cooperative Society he shall cease to be a member of the Panchayat Samiti;

(b) Associate Members, namely,(i).....;

(ii) such Members or Members of the Punjab Legislative Council as the Govt. may, by order, specify: Provided that; (c).....;

(cc) after the first general election of primary Members of the Panchayat Samitis is held; Coopted Members to be coopted in the following manners, notwithstanding anything contained in clause (c) of Section 16 comprising:

(i) two women securing the highest number of votes amongst the women candidates in the election under subclause (i) of clause (a), where no woman is elected under clause (a) Provided.....:

(ii) four women belonging to the Scheduled Castes and Scheduled Tribes securing in the election under subclause (i) of Clause (a) the highest number of votes amongst candidates of those Castes and Tribes, where no such person is elected

under clause (a): Provided... .. ;

(d) Ex officio Members, namely the SubDivisional Officer, having jurisdiction in the block and the Block Development Officer of the block: Provided"

This Section pinpoints the persons who can be appointed as Members of the Panchayat Samitis for a block. The persons to be nominated by the Government under Section 5(4) have necessarily to belong to one of the categories mentioned in Section 5(2) because it is specifically provided that a Panchayat Samiti for a block shall consist of the Members of the categories mentioned therein. It may be further noticed that in Section 5(3) too, which provides for the reconstitution of Panchayat Samiti in case of redelimitation after the constitution of the Panchayat Samiti, again the word "person" has been similarly used and it is laid down that reconstituted Panchayat Samiti will consist of Members who were representing the area immediately before redelimitation, but if the number of such Members is less than that provided in subsection (1) of Section 5 the Government is entitled to nominate "persons" so as to complete the requisite number. In this provision evidently the word "persons" has been used having a direct link with the persons described in Section 5(1) of the Act. It can, therefore, be safely assumed that in Section 5(4) also the word "persons" has been similarly used taking colour from Section 5(2). There is, therefore, no scope for accepting the contention that the word "persons" used in Section 5(4) is either vague or give arbitrary powers to the Government to make nominations of the Members of the Panchayat Samiti. The Government's powers to nominate Members under Section 5(4) is confined to the classification of persons mentioned in Section 5(2) and, therefore, it cannot be said that no guidelines have been provided for selecting the persons to be nominated as Members in a situation envisaged by Section 5(4).

7. The last objection that the enactment of the Amending Act by which Section 5(4) has been added is mala fide is equally untenable. It is alleged that this amendment was made under the political influence of Shri Lal Singh, respondent No. 4, who was Minister of State, Animal Husbandry and Development and Panchayats, Haryana. It is said that there is a political rivalry between respondent No. 4 and one Tikka Jagjit Singh and in order to diminish the political influence of Tikka Jagjit Singh and to safeguard the interest of respondent No. 4, Section 5(4) was introduced in the Act. In other words, it is alleged that the Legislature as a body had been influenced by respondent No. 4 to bring subsection (4) of Section 5 on the statute book. This contention has to be rejected in the light of *K. Nagaraj and others etc. v. State of Andhra Pradesh and another etc.*, A.I.R. 1985 Supreme Court 551, wherein it was observed by the Supreme Court as follows:

"The argument of mala fides advanced by Shri A.T. Sampat, and adopted in passed by some of the other counsel, is without any basis. The burden to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be

accepted without proper pleadings and adequate proof, both of which are conspicuously absent in these writ petitions. Besides, the Ordinance making power being a legislative power, the argument of mala fides is misconceived. The legislative, as a body, cannot be accused of having passed a law for an extraneous purposed. Its reasons for passing a law are those that are stated in the Objects and Reasons and if, none are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of "transferred malice" is unknown in the field of legislation."

Thus it is not possible to hold that Section 5(4) is ultra vires on the ground of mala fide.

8. For these reasons none of the objections raised by the petitioners Section 5(4) can be struck down as mala fide, arbitrary or irrational. The constitutionality of this Section is, therefore, upheld.

9. Now we come to the facts of these cases. Writ Petition Nos. 1178 and 1254 of 1985 relate to the Panchayats and Sabha areas in Ambala district. Earlier there were two blocks in this area, namely, Raipur Rani block and Naraingarh block. The former consisted of 94 Panchayats and the latter of 110 Panchayats. These blocks were redelimited to carve out another block; namely, Barwala block. The Haryana Government issued a notification dated December 6, 1984 in this respect (Annexure P.2 in both the writ petitions). According to this notification the constituency of Naraingarh block was reduced from 110 Panchayats to 104. Similarly, the constituency of Raipur Rani block was reduced from 94 Panchayats to 56. The new Barwala block was carved out of the residual 44 Panchayats. In the wake of this redelimitation of the blocks the Haryana Government nominated 10 persons as Members of Panchayat Samiti, Raipur Rani block, 8 persons as members of Panchayat Samiti Barwala block and one person as Member of Panchayat Samiti, Naraingarh block (Annexure P.3 in both writ petitions). The validity of this redelimitation and nomination of Members of Panchayat Samitis has been challenged on the ground of mala fide. It is alleged that this was done at the instance of respondent No. 4 to give him political advantage in the area over his rival Tikka Jagjit Singh. This allegation has been denied by the State Government. It is revealed from the return filed by the State that the redelimitation of the blocks as well as nomination of the Members of Panchayat Samitis had been done on the recommendation of the Deputy Commissioner, Ambala. The Deputy Commissioner recommended the redelimitation for the benefit of the villagers residing in the newly constituted Barwala block. Previously they had to go to Raipur Rani for work in the office of the Block Development and Panchayat Officer and to Kalka for work in the office of the S.D.O. (Civil). The new Barwala block was created in order to mitigate their difficulties. The nomination of the Members of the Panchayat Samitis were also made on the recommendation of the Deputy Commissioner. No allegation of mala fide has

been made against the Deputy Commissioner. It cannot be assumed that all this was done under the orders of respondent No. 4. No material was placed before us to establish that the Deputy Commissioner had acted under the directions of respondent No. 4. Annexures P.2 and P.3 could be struck down only if it could be shown that they were issued at the instance of respondent No. 4 for his own gain. As there is no material to come to such a conclusion the action of the State Government in redelimiting the blocks and nominating Members of Panchayat Samitis cannot be struck down as mala fide.

10. Writ Petition No. 2319 of 1985 relates to the blocks in Karnal District. Previously there were three blocks, namely, Madlauda block, Panipat block and Samalkha block. In the process of redelimitation a fourth block, namely Israna block was carved out from the Panchayats constituting the other three blocks. It is alleged that the Deputy Commissioner, Karnal has failed to call a meeting of the Panchayat Samiti, Madlauda block, to elect the Chairman and ViceChairman and that this action is illegal, unjust, unfair and unconstitutional. In the return filed by the respondents it is explained that a meeting was indeed called for election of Chairman and ViceChairman to be held on February 22, 1985 which had to be adjourned under unavoidable circumstances to 8th of March, 1985. The meeting could not be held on 8th March too on account of a stay order granted by the High Court in C.W.P. No. 1046 of 1985. After the dismissal of this writ petition no further meeting was fixed in view of the fact that the creation of the new Israna block was under active consideration of the Government and it was considered feasible to wait for the creation of the new block before calling a meeting to elect Chairman and ViceChairman of Block Samiti, Madlauda. The delay in the calling of the meeting is, therefore, reasonably explained and it cannot be said that the action of the Deputy Commissioner in this respect was mala fide or illegal.

11. Another objection taken by the petitioners is that although village Assan Kalam is surrounded by villages Sithana, Nauhra and Assan Khurd, which have been transferred to Madlauda block from Panipat block, yet it has been retained in Panipat block. It is alleged that the retaining of Assam Kalan in Panipart block in such circumstances is mala fide and uncalled for. In support of this contention a plan (Annexure P.1) has been placed on the record. In reply to this objection for the respondents have denied the correctness of the plan (Annexure P.1) and it is submitted that the petitioners' contention is wrong that Assan Kalan is surrounded by villages of Madlauda block. It is said that Assan Kalan adjoins village Kabri which is in the Panipat block. There is, therefore, factual dispute between the parties regarding the location of Assan Kalan and this being a disputed question of fact cannot be taken note of in writ jurisdiction of this Court.

In the light of what is stated above, we find no merit in these writ petitions which are hereby dismissed. No costs.