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**(1973) 07 P&H CK 0002**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ No. 368 of 1973**

Sant Singh and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

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**Date of Decision :** 20-07-1973

**Acts Referred:**

Punjab Gram Panchayat Act, 1952 — Section 4

**Citation :** (1973) 07 P&H CK 0002

**Hon'ble Judges :** R.S. Narula, J; Prem Chand Jain, J; M.R. Sharma, J

**Bench :** Full Bench

**Advocate :** Joginder Singh, for the Appellant; I.S. Tiwana, D.A.G., (Punjab) and Mr. S.S. Kang, for the Respondent

**Final Decision :** Dismissed

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## Judgement

M.R. Sharma, J.—In this petition under Article 226 of the Constitution it has been alleged that no notification u/s 4 of the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act), has been issued. In the year 1972, the Government proceeded to issue a notification u/s 6 of the Act in which the name of this Gram Panchayat appears at S. No. 55. This notification, however, relates to Tehsil Sirhind. According to the Learned Counsel for the Petitioners, in the absence of a notification u/s 4 of the Act, no election to the Gram Panchayat can be held.

2. Mr. Sibal, Learned Counsel for the Respondents, has however drawn my attention to the original notification No. EP-P. S 60/361(sic) dated September 30, 1960, issued under Sections 4 and 6 of the Act, which shows that the Gram Sabha Lalon Khurd had been duly constituted and its name appears at S. No. 55 of the notification. Once a Gram Sabha is validly constituted, it not necessary to notify the number of Panches to be elected for a particular Gram Sabha in Balwant Singh etc. v. The State of Panjab 1973 Cur. L.J. 238. a learned Judge of this Court under some what similar circumstances issued the writ and quashed the election held. It appears that the notification u/s 4 of the Act issued earlier was not brought to the notice of his Lordship. Under these circumstances, I deem

it proper that this case should be heard by a Division Bench Let the papers be placed before my Lord the Chief Justice for obtaining appropriate orders.

3. Sub-tehsil Amloh was a part of tehsil Sirhind of district Patiala. Later on, it was transferred to tehsil Nabha of the same district. Notification regarding demarcation of the Sabha areas u/s 4 of the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act), had been issued in respect of the Grain Panchayats of Amloh sub-tehsil when it was a part of tehsil Sirhind. Fresh elections to the Gram Panchayat, Lallan, Khurd, were challenged in this petition, which came up before me in the Chambers, on the ground that the name of this Gram Sabha was not mentioned in the notification regarding the constitution of Gram Sabhas in tehsil Nabha. It was submitted that before elections could be held, a notification u/s 4 of the Act demarcating the Sabha area had to be issued. Reliance in this connection was placed on a judgment rendered by my learned brother C.G Suri, J. in Balwant Singh etc. The State of Punjab etc<sup>1</sup>. On behalf of the Respondents, my attention was drawn to a Gazette Notification dated September 30, 1960, published by the State Government duly constituting Lallan Khurd as a Gram Sabha. This notification had not been brought to the notice of Suri, J. when he decided Balwant Singh's case (supra). In these circumstances, I requested my Lord the Chief Justice to constitute a Division Bench for the decision of this case. Presumably, because of the large number of cases in which elections had been challenged on similar grounds, my Lord the Chief Justice ordered this case to be heard by a Full Bench. This is how this reference has come up before us.

4. In the instant case, the election of Respondents Nos. 5 to 10, who have been elected to the Executive Committee of the Gram Panchayat, Lallan Khurd has been challenged. The jurisdiction of this Gram Panchayat extends to villages Lallan Khurd and Dewa Gendhuan. The Gram Panchayat was initially constituted by a notification issued by the State Government on September 20, 1960. This notification reads as under:

"No. E-P S-60/361: In exercise of the powers conferred by Sub-section (1) of Section 4, Sub-section (1) of Section 5 and Sub-section (1) of Section 6 of the Punjab Gram Panchayat Act, 1952 (Act No. IV of 1953), read with Punjab Government Development and Panchayat Department Notification No P.B 24 (2)60/70610, dated 18(sic)th August, 1960, I hereby declare each of the villages or groups of villages specified in column 2 against each serial number mentioned in column 1, of the schedule given below to constitute a Sabha Area and to establish for each Sabha area a Gram Sabha by the name mentioned in column 5, the Executive Committee where of shall consist of such number of persons including the Sarpanch as are specified against each in column of the aforesaid schedule:

#### SCHEDULE

Sr. No.

Name of villages constituting Sabha Area

Tehsil

District

Name of Gram Sabha

No. of persons of the Executive Committee of the Gram Sabha mentioned in Col. 5

1

2

3

4

5

6

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55.

Lallan Dewa Gandhuan

Khurd

Sirhind

Patiala

Lallan Khurd.

5. At the time when this notification was issued, these two villages fell within the area of sub-tehsil Amloh, which was part of tehsil Sirhind. Later on, sub-tehsil Amloh as a whole made a part of tehsil Nabha and there is no controversy on that point.

6. Vide Notification No. EP-PS-72/364, dated May 30, 1972, published in the Government Gazette on June 3, 1972, village Dewa Gandhuan was excluded from the area of Gram Sabha, Lallan Khurd. Vide notification No. EP-PS 72/423, dated June 2, 1972, published on June 5, 1972, Gram Panchayat, Lallan Khurd,

was re-constituted in the following terms:

In supersession of all previous notifications issued in this behalf and in exercise of the powers conferred by Section 6 of the Punjab Gram Panchayat Act, 1952 (Act No. IV of 1953(sic)), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to order that the Executive Committees of the Gram Sabhas in tehsil Sirhind of Patiala district, mentioned in column 2 of the Schedule given below established under notification(s) mentioned in column 3 and constituting the village(s) mentioned in column 4, shall consist of such total number of members including the Sarpanch as are mentioned in column 5 of the said Schedule out of which the number of members belonging to the Scheduled Castes shall be as mentioned in column 6 thereof:

#### SCHEDULE

1

2

3

4

5

6

Sr. No.

Name of Gram Sabha

No. and date of notification

Name(s) of village(s) constituting Sabha Area

Total No. of members of the Executive Committee including Sarpanch

No. of members belonging to Schedule castes

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55.

LallanKhurd

EP PS-60/ 361, dated September 20, 1960.

7. The jurisdiction of the newly constituted Gram Panchayat was confined to village Lallon Khurd only. The Executive Committee of this Gram Sabha was to consist of five members out of which one was to be a member of the scheduled castes. It would be worthwhile to mention here that this notification related to tehsil Sirhind of Patiala district. It has been explained in the return filed on behalf of Respondent No. 2 that the Development Department over-looked the fact that the entire sub tehsil Amloh, which was formerly part of tehsil Sirhind, had been transferred to tehsil Nabha.

8. The grievance of the Petitioners is that Lallon Khurd is a common name and since the name of Gram Panchayat Lallon Khurd was not included in the notification relating to the Gram Sabhas of tehsil Nabha, they remained under the impression that the elections to this Gram Sabha would be held on some later date. Though it is admitted that the election programme for holding elections to this Gram Sabha was in fact issued by the Deputy Commissioner, Patiala, on or about June 15, 1972, yet this programme was not given any publicity. It is further argued on their behalf that unless and until appropriate notification envisaged by Sections 4 and 5 of the Act is issued regarding a Gram Sabha with reference to the tehsil in which it is situated, the Gram Sabha cannot be deemed to have been properly constituted. Consequently, the election of Respondents Nos. 5 to 10 as the members of its Executive Committee stands vitiated.

9. On behalf of the Respondents, it is submitted that Gram Sabha, Lallon-Khurd, was in fact constituted on September 20, 1950(sic). It being a body-corporate continued in existence unless it had been abolished by operation of law. Further, the area of village Dewa Gandhuan was excluded from the area of this Gram Sabha vide notification dated May 30, 1972, published in the Government Gazette on June 3, 1972. Thereafter, another notification was issued under which the total number of the members of the Executive Committee was fixed at 5 including one member belonging to the scheduled castes. The Learned Counsel for the State has urged that for fixing the number of members of the Executive Committee the State Government was not called upon to issue a notification and that this purpose could be achieved by a mere executive decision. The notification dated June 2, 1972, was issued out of abundant caution and merely because the name of tehsil Sirhind crept into the two notifications issued in the year 1972, the election does not stand vitiated because this mistake can at best be said to amount to an irregularity. The electorate of Gram Sabha, Lallon Khurd, were given sufficient notice of the impending elections when the Deputy Commissioner issued the election programme.

10. In order to appreciate the rival contentions, it becomes necessary to notice

the relevant statutory provisions. Section 3(g) of the Act defines "Gram Panchayat" to mean "the Panchayat constituted u/s 6" of the Act. Sections 4 and 5 relate to demarcation of Sabha areas and establishment and constitution of a Gram Sabha. They read as under:

#### 4. Demarcation of Sabha areas:

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

Provided that neither the whole nor any part of - (a) a Notified Area u/s 241 of the Punjab Municipal Act, 1911; or

(b) a Cantonment; or

(c) a Municipality of any class ;

shall be included in a Sabha area unless the majority of voters in any Notified Area or Municipality of the Third Class desire the establishment of a Gram Sabha in which case the assets and liabilities, if any, of the Notified Area Committee or the Municipal Committee, as the case may be, shall vest in the Gram Sabha thereafter established, and the Notified Area Committee or the Municipal Committee shall cease to exist:

Provided further that the Government may, in any particular case, relax the limit of five hundred.

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

(3) If the whole of the Sabha area is included in a municipality, Cantonment, or Notified Area u/s 241 of the Punjab Municipal Act, 1911, the Sabha shall cease to exist and its assets and liabilities shall be disposed of in the manner prescribed.

5. Establishment and Constitution of Gram Sabha:-(1) Government may, by notification, establish a Gram Sabha by name in every Sabha area.

(2) Every Gram Sabha shall, by the name notified under Sub-section (1), be a body corporate having perpetual succession and a common seal, and, subject to any restriction by or under this Act, or any other law, shall have power to acquire, hold, administer and "transfer property, movable or immovable, and to enter into contracts and shall by the said name sue or be sued and do all such things as are necessary for which it is constituted.

(3) Every person who, for the time being, is entered as a voter on the electoral roll of the State Legislative Assembly for the time being in force, and pertaining to the Sabha area, shall be a member of the Sabha of that Sabha area.

Section 6 lays down that every Sabha shall in the prescribed manner elect from its members an Executive Committee which shall be styled as Gram Panchayat

consisting of not less than five and not more than eleven members. Provision has also been made for election or co-option of a woman Panch and for the election of Panches belonging to the scheduled castes. Chapter II-A of the Act relates to disputes regarding elections. Section 13-B lays down that no election of Panch or Sarpanch shall be called in question except by an election petition presented in accordance with the provisions of this Chapter. It is followed by order statutory provisions regarding the presentation of petitions, contents of the petitions, the procedure before the prescribed authority and the powers of the prescribed authority. Section 13-0 is of some importance inasmuch as it lays down the grounds for setting aside elections. The material portion of this section reads as under:

13-0. Grounds for setting aside elections:- (1) If the prescribed authority is of the opinion.

XX XX XX

(d) that the result of the election in so far as it concerns the elected person, has been materially affected-

(i) by the improper acceptance of any nomination; or

(ii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void ; or

(iii) by any non-compliance with the provisions of this Act or of any rules made under this Act:

the prescribed authority shall set aside the election of the elected person.

11. A perusal of the aforementioned provisions shows that the Government has to issue a notification for declaring a village or a group of contiguous villages with a population of not less than 500 to constitute a Sabha area. A Gram Sabha has to be established by name. There is no provision which makes it obligatory for the State Government to issue a notification for prescribing the number of members of Executive Committee of a Gram Sabha. Last of all, the election of a candidate can be set aside on the ground of non-compliance with statutory provisions only if such noncompliance materially affects the result of the election.

12. In the instant case, the Gram Sabha as originally constituted consisted of two villages, namely, Lallan Khurd and Dewa Gandhuan. The subsequent notification by which Dewa Gandhuan was taken out of the jurisdiction of this Gram Sabha makes a reference to tehsil Sirhind. Similarly, the later notification which prescribes the number of members of the Executive Committee of this Gram Sabha also makes a reference to this tehsil. The explanation given by the administrative department is that it escaped their notice that sub-tehsil Amloh had been transferred from tehsil Sirhind to tehsil Nabha. In these circumstances, it has to be determined whether the wrong description of the "sub-tehsil in which the Gram Sabha is situate destroys the effects of notifications issued under

Sections 4 and 5 of the Act or not.

13. After giving a careful consideration to the entire question, I am of the view that this plea raised on behalf of the Petitioners deserves to be negated. In the first place, people who resided in the area of erstwhile Gram Sabha, Lallan Khurd, were expected to know that their sub-tehsil had been transferred from tehsil Sirhind to tehsil Nabha. Secondly, in the notification dated June 2, 1972, published in the Government Gazette on June 5, 1972, it has been expressly mentioned in column No. 3 that this Gram Sabha had been constituted by an earlier notification issued on September 20, 1960. A reference to that notification could easily have brought to the knowledge of all concerned that the earlier Gram Sabha Lallan Khurd, which was then situated within sub-tehsil Amloh, was being made the subject-matter of the fresh notification. These considerations apart, the electorate residing in the area of a Gram Sabha have a statutory right to be informed of the impending elections by an election programme. If such a programme is issued in accordance with the rules on the subject, no constituent of a Gram Sabha can raise an objection that he did not have an adequate notice of the elections to be held. It is not disputed that in this case, the election programme was in fact issued. According to the information supplied by the learned Deputy Advocate General, Punjab, Nominations were to be filed on June 21, 1972. They were to be scrutinised on the same day and the voting, if necessary, was to be held on June 22, 1972. The allegation that this programme was not given wide publicity has been controverted on behalf of the Respondents and the Petitioner apart from making a bald assertion on this point did not pursue the matter any further. Consequently, it must be held that the Petitioners had adequate advance knowledge about the date of the elections and the election of Respondents Nos. 5 to 10 cannot be set aside on this ground. The mistaken description of the tehsil in which this Gram Sabha was situated was under these circumstances not a material consideration for judging the validity or invalidity of the elections.

14. An election is a time consuming process involving a lot of expense. If it is established that the voters have been able to make their choice in a free manner, the elections should not be set aside on mere technicalities. A Court of law charged with the duty of determining the validity of an election must lean in favour of the will of the people. This principle is firmly established in our system of laws relating to elections. Section 100 of the Representation of Peoples Act, 1951, also provides that the election of the returned candidate can be declared void on account of any non-compliance with the provisions of the Constitution or of the Act or the rules framed thereunder only if such non-compliance with the statutory provisions has materially affected the result of the election. This provision came for consideration by the Supreme Court of India in *Mahadeo v. Babu Udai Partap Singh* AIR 1956 SC 824. Speaking for the Court, P.B. Gajendra Gadkar, the learned Chief Justice, observed as under:

Therefore, we are left with only one irregularity, and that has been introduced by

the misprinting of the name of Respondent No. 1 on the ballot papers; and this irregularity can legitimately be treated as falling u/s 100(1)(d) (iv) of the Act. Misprinting of the name of Respondent No. 1 on the ballot papers amounts to noncompliance with Rule 22 of the Rules ; but the proof of such noncompliance does not necessarily or automatically rendered the election of the Appellant void. To make the said election void, Respondent No. 1 has to prove the noncompliance in question, and its material effect on the election This latter fact he has failed to prove, and so, his challenge to the validity of the Appellant's election cannot be sustained.

15. In Paokai Haokip Vs. Rishang and Others, , it was observed that burden lay upon the election-Petitioner to show affirmatively that the result of the election has been materially affected.

16. Section 13-0 of the Act has been framed on the lines of Section 100 of the Representation of the Peoples Act. 1951. An election Petitioner, who challenges the election of the members of a Gram Sabha, has not only to prove that some provision of the Act or the Rules framed under it had not been complied with in the course of elections, but also to show affirmatively that such non compliance has materially affected the result of the election in so far as it concerns the elected persons In the instant case, no material has been brought on record by the Petitioners to show that but for this mistaken description of the tehsil the result of the election would have been different.

17. In Balwant Singh's case (supra), the relevant notification was not brought to the notice of my learned brother C.G. Suri. j and it was taken for granted that notifications under Sections 4 and 5 of the Act constituting the Gram Sabha by name had not been issued

18. For the reasons mentioned above. I hold that the Gram Sabha, Lallan Khurd, had been properly constituted and Respondents Nos. 5 to 10 had been validly elected as the members of its executive Committee. The petition deserves to fail and I order accordingly In the circumstances, however, there shall be no order as to costs.

R.S. Narula, C.J.

19. I agree.

Prem Chand Jain, J.

20. I also agree.