

(1991) 09 P&H CK 0126
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10509 of 1991

Satpal and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 04-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Gram Panchayat Act, 1952 — Section 3, 4

Citation : (1992) 102 PLR 389

Hon'ble Judges : I.S. Tiwana, Acting C.J.; Jawahar Lal Gupta, J; G.S. Chahal, J

Bench : Full Bench

Advocate : Harish Rathee, for the Appellant; Aman Dahiya, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Can the Government constitute more than one Sabha area in a village u/s 4 of the Punjab Gram Panchayat Act, 1953 ? This is the short question that arises for the consideration of this Full Bench. A few facts may be noticed.

2. On July 8, 1986, the Government of Haryana issued a notification under Sections 4 and 5 of the Punjab Gram Panchayat Act, 1952 (as applicable to Haryana) (hereinafter referred to as "the Act"). This notification reads as under :--

"HARYANA GOVERNMENT DEVELOPMENT AND PANCHAYATS DEPARTMENT
NOTIFICATION.

No. DIH DA-1-88/460

Dated 8th July, 1988.

In exercise of the powers conferred by sub-Sections 1 and 2 of Section 4 and Section 5 of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1955) and all other powers enabling him in this behalf and in supersession of all the previous

notifications issued in this behalf, the Governor of Haryana hereby declare the village or group of villages specified in column 2 of the Schedule given below to be Sabha Area and establishes a Gram Panchayat for this Sabha Area by the name specified against in column 5 of the said schedule, which shall consist of such number of Panches, including Sarpanch as is specified against the Gram Panchayat in column No. 6 thereof out of which the number of panches belonging to the Scheduled Castes shall be as mentioned in column 7 and number of Panches belonging to Backward "Class shall be mentioned in column 8 of said schedule :--

SCHEDULE

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Name(s)	Block	District	Name of	No. of	No. of	No. of	No. of	village(s)	Gram	Panches
Panches	Panches	Panch-	includ-	belong-	belong-	ayat	ing	Sar-	ing	ing
S.	C.	to	B.	C.						
-----										1 2 3 4 5 6
7	8	-----								177
Gagana	Mundlana	Sonepat	Gagana	7	2	1	177A	Tandi "	Tandiapana	6 7 1 -
apana	Gagana	Gagana	90	Rukhi	Gohana	Rukhi	6	1	1	90A Rukhipana "
Rukhipana			6				1			1

Sd/- (G.M. Goyal) Commissioner & Secretary to Government Haryana, Development and Panchayat Department".

3. Five residents of village Gagana, who are members of the Gram Sabha and voters for the Assembly constituency have approached this court through the present writ petition to challenge the validity of this notification. The primary ground urged in support of the petition is that under the scheme of the Act, a village is the basic unit. It cannot have more than one Gram Panchayat.

4. Even though the State of Haryana, the Director of Panchayats and the Sub-Divisional Officer were impleaded as respondents and were served with a notice of the writ petition, no written statement has been filed on their behalf, to support the notification, However, on behalf of respondent No. 4, the Gram Panchayat, a written statement has been filed. It has been inter alia averred that the provisions of the Act provide for the creation of more than one Sabha Area and there are many villages in the State of Haryana which have even upto six or seven Sabha Areas.

5. When the matter came up initially for hearing, learned counsel for the petitioners had relied upon the decision of a Division Bench of this Court in State of Haryana and Ors. v. Daya Ram (1985) 87 P.L.R. 97, to contend that the Government is not competent to create one or more Sabha Areas out of a village. On behalf of the respondents reliance was placed on another Division Bench's decision in Gurdial Singh and Ors. v. State of Haryana 1989 P.L.J. 492, to contend that one or more Sabha Areas could be constituted for any village. On

account of the conflict between the two decisions, the matter was referred to a larger Bench. That is how it has come up for consideration before this Full Bench.

6. The law relating to the constitution of Panchayats was initially enacted in the year 1939 in the form of The Punjab Village Panchayat Act, 1939. Thereafter, Article 40 of the Constitution gave a mandate that "the State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of Self-Government". Soon after, the Punjab Gram Panchayat, Bill 1952 was presented to the State Assembly. According to the objects of the Act as published in the Punjab Gazette Extraordinary of July 28, 1952, the bill envisaged that "it would be the responsibility of the Government to establish a Gram Sabha and a Panchayat in each village or, in some cases in group of villages where the individual villages are too small. This replaces the past practice of establishing a Panchayat in selected villages only. In consequence of the new Panchayat Law, the electorate will include the entire adult population of the village, although in the past only adult males constituted the electorate.....". The Act received the assent of the President and was published in the Gazette of March 26, 1953. A few relevant provisions deserve notice.

"Section 3 (g). "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 : Provided that neither the whole nor any part of--

(a) a Notified Area u/s 258 of the Haryana Municipal Act, 1973 ; 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 Gram Panchayat 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 Panchayat of that Gram Panchayat 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 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 258 of the Haryana Municipal Act, 1973 the Gram Panchayat

shall cease to exist and its assets and liabilities shall be disposed of in the manner prescribed.

If the whole of the Sabha area is included in the Faridabad Complex under the Faridabad Complex (Regulation and Development) Act, 1972, the Gram Panchayat shall cease to exist and its assets and liabilities shall be the assets and liabilities of the Administration of Faridabad Complex".

7. A perusal of Section 3 (g) shows that "a revenue estate" constitutes a village. The word estate is not defined in the Act. However, the Punjab Land Revenue Act, 1887 defines estate to mean any area, "for which a separate record-of rights has been made" ; or "which has been separately assessed to land revenue, or would have been so assessed if the land revenue had not been released, compounded for or redeemed"; or "which the State Government may, by general rule or special order, declare to be an estate". Consequently, any area for which a separate record of rights has been made or which has been separately assessed to land revenue or which the State Government may declare to be an estate, constitute a village. What then is the scope of the Government's power regarding demarcation of Sabha Area ? Is it that there has to be one Sabha Area for every village with a population of five hundred or more or is it that the Government can constitute two or even more Sabha Areas for one village with a population of not less than five hundred ? Section 4, as reproduced above, can be read as----"Government may, by notification, declare any village..... with a population of not less than five hundred to constitute one or more Sabha Areas." Similarly, the provision contemplated that the Government can by notification declare any "group of contiguous villages with a population of not less than five hundred to constitute one or more Sabha Areas." On a plain reading and consideration of the provisions of Section 4, we are of the opinion that Government can constitute one or more Sabha Areas in respect of a village with a population of not less than five hundred. In our opinion, the words of "the Statute" are "precise and unambiguous" and can be understood in their "natural and ordinary sense" to mean that the Government can constitute more than one Sabha Areas for a village.

8. Mr. Rathee, however, contends that Section 4 should be read to say that "Government may, by notification, declare any village. with a population of not less than 500 to constitute one.....Sabha Area" and "a Group of contiguous villages with a population of not less than five hundred to constitute more than one Sabha Areas.". We are unable to accept this contention. In our opinion, the words of the Statute are absolutely clear and plain. They admit of only one meaning, namely, that Government can constitute more than one Sabha Areas for a village. The reason is not far to seek. It is quite possible that one village may have a population of five thousands. It may virtually be equal to ten small villages. If only one Panchayat is constituted for a village with a population of five thousand, the Panches may find it totally impossible to exercise the administrative and judicial powers which the Act envisages so as to effectively

cover "the entire social needs of the village community." A Panchayat has been visualised as "the smallest cell of a democratic polity which seems to educate people to manage their own affairs themselves in a democratic manner." The Government is the best judge of the needs of the village community. The Legislature in its wisdom has chosen to permit the Government to constitute one or more Sabha Areas for any villages or group of contiguous villages with a population of not less than five hundred. In fact, the provision even permits the Government to relax the limit of five hundred. In a given case, the Government may feel that a village with a vibrant & vainly population of two hundred needs to be constituted as a separate Sabha Area and in another case a group of three or four contiguous villages with a population of only 500 or more may be declared as one Sabha Area. The statute confers a discretion on the Government to constitute one or more Sabha Areas for village or a group of contiguous villages. We find no reason which may persuade us to unnecessarily narrow down the scope of Government's jurisdiction by interpretation of the Statute.

9. Mr. Rathee relies on a decision of Division Bench in Daya Ram's case (supra) to contend that the Government cannot constitute more than one Sabha Area for a village. He refers to the following observations in support of his submission :--

"Paragraph 6. The only point urged before us by Mr. Harbhagwan Singh, learned Advocate General, Haryana, was that the State Government could create any number of Sabha areas within a village and that the view taken by the learned Single Judge that the Sabha area could not be constituted if the place did not fall within the definition of the word "village", was not correct."

"Paragraph 7. On giving our thoughtful consideration to the entire matter, we find no merit in the aforesaid contention of the learned Advocate General. Section 4 of the Gram Panchayat Act, 1952 (hereinafter referred to as the Act) relates to demarcation of areas and Section 5 to establishment and Constitution of Gram Panchayats. The relevant portions of the two sections read as under :

"4(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.

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

xx xx xx xx 5(1). Government may, by notification, establish a Gram Panchayat by name in every Sabha area,"

xx xx xx xx An analysis of the aforesaid two sections would show that the Gram Sabha can be constituted out of a village or group of village having population of 500 or more. After the constitution of Gram Sabha the Government may establish a Gram Panchayat by name in every Sabha area. Thus, it is evident that the Gram Sabha is to be constituted out of a village or group of contiguous village. The word "village" has been defined in Section 3 (e) of the Act which is

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

10. On a close scrutiny of the judgment, we find that the notification which fell for consideration of the Division Bench read as under :--

Sr.	Name(s) of Tehsil	Distt.	Name of No. of No. of No. village (s)	Gram Panches
1	Kushak Palwal	Gurgaon	Kushak 5 1	III-A Joriabad -do- -do- Joriabad 5 1
2	Bhawana	-do- -do- Bhawana	5 1	III-B Bhawana -do- -do- Bhawana 5 1
3	Accheja	-do- -do- Accheja	5 1	III-C Accheja -do- -do- Accheja 5 1
4	Allahabad	-do- -do- Allahabad	5 1	III-D Allahabad -do- -do- Allahabad 5 1
5	Karimpur	-do- -do- Karimpur	5 1	III-E Karimpur -do- -do- Karimpur 5 1
6	Kudabadpur	-do- -do- Kudabadpur	5 1	III-F Kudabadpur -do- -do- Kudabadpur 5 1

11. It was challenged on the ground that only Kushak was recorded as a Revenue estate and other areas like Joriabad etc. where Majras or hamlets forming part of the revenue estate of Kushak and the learned Single Judge found that in the revenue records Kushak has alone been shown as a revenue estate and since the other areas has not been shown as separate revenue estates, they could not be treated as villages and as such no Sabha Area could be constituted in the names of Joriabad, Bhawana etc. This decision of the learned Single Judge was sustained by the Division Bench on the ground that "Joriabad, Bhawana, Accheja, Allahabad, Karimpur and Kudabadpur do not constitute separate revenue estates inasmuch as they are not so recorded in the revenue records. In this view of the matter, the learned Single Judge was right in concluding that these areas do not fall within the definition of "village" and hence could not be notified as separate Sabha Areas."

12. The view in Daya Ram's case (supra) fell for consideration before another Division Bench in Gram Panchayat, Bhorakh Vs. Amrik Singh and others, , their Lordships observed as under :--

"Paragraph 7. In Daya Ram's case (supra), the Division Bench was considering an entirely different proposition, though the contention urged by the counsel for the appellant in the case was somewhat overlapping. The question under consideration in the said case before the Division Bench was whether a Gram Sabha can be created with respect to a village being not a revenue estate. The Division Bench observed that on the facts of the case in hand, the named villages did not constitute separate revenue estates inasmuch as they were not so recorded in the revenue records. It was in view of these peculiar facts that the Sabha area was carved out of the village bearing no revenue estate and the same was falling outside the purview of the definition of "village" provided by the Act. The Division Bench came to the conclusion that Notification of a separate Gram Sabha area was bad."

13. It is no doubt correct that in Daya Ram's case (supra) the Division Bench found that the areas described as Joriabad etc. were not recorded as separate revenue estates and as such no Sabha Area could be constituted therefor. Consequently, the notification impugned in that case was quashed. However, in the view that we are taking namely that more than one Sabha area can be constituted for one village, we do not find it possible to sustain the view taken by the Division Bench in Daya Ram's case. Even if village Kushak only was recorded as a revenue estate and the various other areas like Joriabad etc. were the hamlets (Majras) of village Kushak, the Government had the power u/s 4 to constitute more than one Sabha Area for village Kushak. It is no doubt correct that an area cannot be called a village unless it is recorded as a revenue estate can have only one Sabha Area inspite of the distinguishing features mentioned by the Division Bench in Amrik Singh's case, we are unable to sustain the view taken by the Court in Daya Ram's case.

14. On the other hand, Mr. Dahiya has relied on the judgments in Gurdial Singh and Ors. v. State of Haryana 1989 P. L. J. 492, and in Gram Panchayat, Bhorakh Vs. Amrik Singh and others, . In Gurdial Singh's case (supra) M. M. Punchhi, J. (as his Lordship then was) observed as under : --

"Paragraph 3. The first objection is that there cannot be two Panchayats in one village. The village is one undoubtedly and it is Kerera Khurd. Section 4 of the Gram Panchayat Act (as applicable to the State of Haryana) provides that the Government may by notification declare any village or group of contiguous villages with a population of not less than 500 to constitute one or more Sabha Areas. Moreover, Panchayats are co-related with Sabha areas and a village can have more than one Sabha area and thus more than one Gram Panchayat. Therefore, creation of two Sabha areas in a village is permissible u/s 4. The language of the section is plain and simple."

15. In Amrik Singh's case, to which a reference has already been made above, M. S. Liberhan, J., observed as under: --

"Paragraph 8. Herein undisputably the Sabha area carved out of the same village does not bear the revenue estate number. From a bare reading of the provisions, the only conclusion that can be drawn is that the Government is competent to carve out any number of Gram Sabha areas in a village, which bears a revenue estate subject to the condition of the population of five hundred people. The relevant factor which has been kept in view is the population of village which appears to be the main object while creating the Sabha area. We are in full agreement with the view taken by the Division Bench and relied upon by the counsel for the appellant and nothing can be gainfully added to it. With utmost respect to our brother, we are unable to accept the finding of the learned Single Bench that the facts of this case are covered by the judgment in Daya Ram's case (supra) for the reasons recorded above. The judgment was delivered in the realm of its own facts and no such law was laid down that the State could not carve out Sabha areas out of one village with one revenue estate."

16. A reference was also made to the judgment in Jogi Ram and Ors. v. State of Haryana, CWP No. 10003 of 1988, which was decided by the Division Bench in limine. We find that the view taken by this Court in the above three cases is correct and affirm it.

17. Having failed on the primary contention, Mr. Rathee, also argued that Tandiapana Gagana was not a defined area. Its boundaries are not known and, therefore, the impugned notification is totally vague. However, on perusal of the record, we find that the petitioners have themselves produced a certificate from the Patwari, Annexure P. 2, which inter alia states that "there is no village named as Tandiapana according to revenue estate, but according to record this is Gangana ka pana. The total area of this pana is 6657 kanals 18 marlas." This clearly shows that the area is clearly demarcated. Its extent is fully known. Consequently, the notification does not suffer from any vagueness whatsoever.

18. In view of the above, we find no merit in this petition, which is consequently dismissed. In the circumstances of the case, we leave the parties to bear their own costs.