

(2010) 08 UK CK 0163
In the Uttarakhand High Court

Shamsher Bhadana

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Citation : (2010) 08 UK CK 0163

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—When action was taken to effect delimitation of gram panchayats, a proposal was given, as contended by the appellant in the writ petition on political pressure, to divide the village panchayat Sajanpur Peeli into two. The appellant and some others objected to the said proposal. In order to ascertain the purported necessity of dividing the said village panchayat, an inquiry was carried out. The said inquiry revealed that two hamlets, namely, Sajanpur Peeli and Peeli Padaw constitute the village panchayat Sajanpur Peeli. It transpired in course of such inquiry that the distance in between these two hamlets is about 12 kms. It also transpired that a river and a forest divide these two hamlets. It also transpired that in accordance with the census 2001, the total population of village panchayat Sajanpur Peeli is 2952 and the population of hamlet Sajanpur Peeli is 1255, whereas the population of the hamlet Peeli Padaw is 1697. Thereafter, by the order impugned in the writ petition, a decision was taken to divide village panchayat Sajanpur Peeli into two, namely, village panchayat Sajanpur Peeli and village panchayat Peeli Padaw. While passing the order, it was indicated that the appellant and his supporters proposed the said delimitation. It was the contention of the appellant in the writ petition, which has been repeated before us, that the order does not show that the proposal to delimit the said village panchayat had been considered; on the other hand, the same shows that the objection alone was considered. It was also contended before the writ Court and repeated before us that similar proposal for

delimitation of 5 more gram panchayats had been given, but those were turned down. It was contended that there was thus discrimination. It was lastly contended that in so far as village panchayats are concerned, they are to be constituted on the basis of population and according to the rules, establishment of a panchayat for a village or villages with a population of 5, 000 is permissible, and in the instant case, village panchayat Sajanpur Peeli had a population of less than 5, 000. It was contended that in such view of the matter, the order impugned was interferable and the learned Judge, by not interfering with the order, while rendering the judgment and order under appeal, erred to take note of the statutory obligation of the authorities concerned to act in accordance with the provisions of the Statute.

2. The orders in relation to other 5 gram panchayats have been annexed to the writ petition. We have perused the same, wherefrom we have found that the situation of those panchayats had nothing in common with village panchayat Sajanpur Peeli. Accordingly, the decision rendered in respect of those 5 gram panchayats has no relevance, whatsoever, with the decision pertaining to village panchayat Sanjanpur Peeli. We, accordingly, do not accept, as has not been accepted by the learned Single Judge, who had rendered the judgment and order under appeal, that there had been discrimination.

3. It is true that the order suggests that it was the appellant and his supporters, who had given the proposal, and that the same is an incorrect recording in the order impugned, but the fact remains that the same is a product of mistake, for it is not contended by the appellant that no proposal was given for the delimitation of the gram panchayat in question. Merely because by mistake the name of the appellant and his supporters had been mentioned as the proposer for delimitation, instead of naming the person who, in fact, had given the proposal, the order impugned cannot be interfered with. It is contended that the order suggests that only the objection has been considered and not the proposal. Unless there is a proposal, there is no question of giving an objection, and if the objection has been considered, that itself suggests that the proposal alongwith objection has been considered. Furthermore, the undisputed fact is, upon consideration of the proposal, a tentative decision was taken, inviting objections, and in pursuance therewith an objection was filed by the appellant and his supporters. Therefore, not only the proposal, but also the tentative decision to accept the proposal was considered, alongwith the objection of the appellant, while the order was passed.

4. It has been contended that if the population does not exceed 5, 000 in plain areas, there is no just reason to delimit an existing village panchayat. The submission appears to us has force. However, the law says that a village panchayat shall be constituted where the population is not less than 1, 000 and does not exceed 5, 000, in the event, the village is situated on the plain area. Therefore, a panchayat can be constituted where the population is 1,000 or more than 1, 000. In such circumstances, there could be a panchayat in the hamlet of

Sajanpur Peeli, as well as a panchayat in the hamlet of Peeli Padaw, at or before the time when village panchayat Sajanpur Peeli was constituted, combining the hamlets of Sajanpur Peeli and Peeli Padaw. However, when village panchayat Sajanpur Peeli was constituted, both the hamlets, Sajanpur Peeli and Peeli Padaw, were brought within its territory. Later on, people of these hamlets objected to having one village panchayat for two hamlets, separated by 12 kms. a river and a forest, when two village panchayats could be constituted for the said hamlets. While this has been taken note of, taking into account the convenience of the people for the purposes for which village panchayats are constituted, a decision was taken, which had no scope of interference and, accordingly, the learned Single Judge refused to interfere. We, by dismissing this appeal, also refuse to interfere.