

(2020) 01 CHH CK 0161
In the Chhattisgarh High Court
Case No : Review Petition No. 1 Of 2020

State Of Chhattisgarh And Ors	Vs	APPELLANT
Lala Ram Sahu And Ors		RESPONDENT

Date of Decision : 28-01-2020

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 3, 4

Citation : (2020) 01 CHH CK 0161

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Jitendra Pali, Manoj Kumar Sinha

Final Decision : Dismissed

Judgement

1. The present review petition has been filed by the petitioners/State seeking review of the order dated 28.11.2019 passed by this Court in WPC No.

4028/2019.

2. The main ground raised by the learned State Counsel is that the aforesaid writ petition seems to have been wrongly got tagged with the bunch of

writ petitions which were disposed of on 28.11.2019. According to the learned State Counsel, the facts in the instant case are quite different as

compared to the other writ petitions which were decided on 28.11.2019. Learned State Counsel took this Court through the relief clause of WPC No.

4028/2019 :

â??That the Hon'ble Court be further pleased to direct the Respondent No.3 Collector Raigarh to consider and decide the pending applications

submitted by the petitioner for constitution of Gram Panchayat on 22.10.2019 (Ann.P/4) in accordance with law and as per circular dated 11.09.2019

(Ann.P/1) before 19.11.19 amending the notification dated 16.10.19 (Ann.P/3).â??

According to the learned State Counsel, from the plain reading of the aforesaid relief itself it would be evidently clear that there was no prayer for

quashment of the notification dated 16.10.2019 which was the final notification, nor was there any challenge to the preliminary notification that was issued on 5.10.2019.

3. Further contention of the learned State Counsel is that it is a case where the original petitioners (respondents no. 1 and 2 herein) in fact have not

filed any objection to the preliminary notification dated 5.10.2019 and therefore in the absence of any representation/objection being filed before the

final notification was issued on 16.10.2019, the original petitioners as such would not have any right to challenge the notification or raise a grievance at

a later stage. The objection/representation that the original petitioners seek to be decided in the relief clause is one which has been filed much after the

notification was published and therefore the writ petition itself was not sustainable at the first instance, and the original petitioners have wrongly got

tagged their writ petition with the aforesaid bunch of writ petitions decided on 28.11.2019.

4. Learned State Counsel further contended that it is a case where in the preliminary notification itself, Gatadeeh was the Gram Panchayat with two

dependent Villages, Silori and Noonpani. The original petitioners are, one from Village Noonpani and other from Village Silori. While the final

notification was published on 16.10.2019, Gatadeeh was shown as an independent Gram Panchayat with Noonpani as its dependent village. Further,

Village Silori was declared as an independent separate Gram Panchayat with Village Doukijor as its dependent village.

5. As per the learned State Counsel, since the original petitioners are from Village Noonpani and Village Silori, Village Noonpani remains as an

dependent village as per the preliminary notification and therefore the original petitioner no.1 (Lala Ram Sahu) should not have any grievance. That as

far as Village Silori is concerned since it is being made an independent Gram Panchayat, the original petitioner no.2 (Balmukund Sahu) also should not

have any grievance on the same. The grievance raised by the original petitioners at this juncture is that the villagers of Village Noonpani wanted the

Village Noonpani to be made a dependent village of Village Siroli which was made a separate Gram Panchayat, as Village Silori and Village Noonpani

were adjacent to each other and it would be convenient to the general villagers at large.

6. It was also submitted by the learned State Counsel that the villagers of Village Siroli had jointly made a representation after the notification dated

5.10.2019 for a separate Gram Panchayat which after due consideration was accepted.

7. On a query being put to the learned Counsel appearing for the original petitioners, he fairly concedes that there was no representation/objection

made before the final notification which was published on 16.10.2019. The only objection that has been raised or filed was one that was filed on

22.10.2019.

8. It would be relevant at this juncture to take note of the fact that the original petitioners as such have not challenged either the preliminary

notification or the final notification, dated 5.10.2019 and 16.10.2019 respectively. In the absence of any challenge to the notifications, even if the writ

petition of the original petitioners on being allowed, the notifications would remain intact. The prayer sought for by the original petitioners was only in

respect of considering their objection/representation dated 22.10.2019.

9. It would be relevant at this juncture to take note of the judgment of this High Court in the case of Gramvasi, Gram Khari, Gram Panchayat Dhamni

& Another Vs. Collector, Baloda Bazar & Others [AIR 2015 CG 7] where in a bunch of writ petitions decided on 24.11.2014 this Court in paragraphs

26 to 29, dealing with the power exercised by the Collector under the Panchayat Raj Adhiniyam and the power of review and also the scope of

interference by the High Court, held as under:

â??26. In Sundarjas Kanyalal Bhathija and Others v. The Collector, Thane, Maharashtra and Others (AIR 1990 SC 261 i)t has been held that the

exercise of delimitation of Municipal area is legislative function, therefore, the right of hearing or principles of natural justice are not applicable. Similar

proposition has been laid down by the Supreme Court in The Talsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur (AIR 1980 SC 882.)

This principle has been reiterated by the Supreme Court in M.R.F. Ltd. v. Inspector Kerala Govt. and Others ((1998) 8 SCC 227)and State of Punjab

v. Tehal Singh and Others ((2002) 2 SCC 7).

27. In Tehal Singh (AIR 2002 SC 533) the following has been held :-

â??7. The principles of law that emerge from the aforesaid decisions are: (1) where provisions of a statute provide for the legislative activity i.e.

making of a legislative instruments or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or

area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into action forthwith provide for certain

consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an

individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to

particular situation; (3) lay down future course of actions, the same is generally held to be legislative in character.

8.the provisions of sections 3 and 4 of the Act which provide for declaring territorial area of a Gram Sabha and establishing a Gram Sabha for that

area do not concern with the interest of an individual citizen or a particular resident of that area. Declaration contemplated under Section 3 of the Act

relates to an area inhabited by the residents which is sought to be excluded or included in a gram sabha. The declaration under Section 3 of the Act by

the Government is general in character and not directed to a particular resident of that area. Further, the declarations so made under Sections 3 and 4

of the Act do not operate for the past transactions but for future situations. â??]

28. While dealing with challenge of similar exercise undertaken by the State of Chhattisgarh in the year 2004, this Court in Ganesh Ram Koshare v.

State of C.G. and Others (2004 (2) CGLJ 327r) ejected the similar grounds of challenge by holding that the exercise of amalgamation/

alteration/change of headquarter of Gram Panchayat is legislative in character, therefore, principles of natural justice are not attracted.

High Court's power of review in matters, legislative in nature :

29. In Rajdhar Singh v. State of M.P. and Another (1995 MPLJ 152) the Division Bench of the Madhya Pradesh High Court held thus :

â??Notifications having been issued in exercise of powers which are legislative in character interference by High Court is impermissible. The decision

of the Authorities in constituting a Gram Panchayat by name of M was perfectly

in accordance with law. It was a decision over which the High Court would not sit as a court of appeal and would not substitute its own views.â??

10. Taking into consideration the aforesaid authoritative decision of this High Court which stands affirmed and still holds the field, this Court is of the opinion that a strong case for review has been made out by the review petitioners.

11. Accordingly, the order dated 28.11.2019 passed in WPC No. 4028/2019 stands hereby recalled.

12. Considering the relief sought for by the original petitioners in the said writ petition and also taking into consideration the fact that the said writ petition got disposed of in limine without factual position being obtained by the learned State Counsel and moreover taking into consideration the fact

that the original petitioners had not filed or raised any objection to the preliminary notification dated 5.10.2019 or before the final notification was

issued on 16.10.2019, their case stands squarely covered by the judgment of this Court rendered in the case of Gramvasi (supra).

13. Accordingly, WPC No. 4028/2019 on facts does not have any merits and the same being devoid of merits deserves to be and is hereby ordered to be dismissed.

14. Let a copy of this order be kept in the record of WPC No. 4028/2019.