

(1985) 12 SC CK 0009

In the Supreme Court Of India

Case No : Civil Appeal No. 2472 of 1972

State of Madhya Pradesh and Others

APPELLANT

Vs

Devilal

RESPONDENT

Date of Decision : 20-12-1985

Acts Referred:

Madhya Pradesh Gram Panchayat Election and Co-option Rules, 1963 — Rule 3
Madhya Pradesh Panchayat Act, 1962 — Section 10, 103, 103(1), 104, 105

Citation : AIR 1986 SC 434 : (1985) 2 SCALE 1470 : (1986) 1 SCC 657 : (1985) 3 SCR 894 Supp

Hon'ble Judges : D. P. Madon, J; A. N. Sen, J

Bench : Division Bench

Advocate : H.K. Puri, for the Appellant; S. K. Dholkia, S. K. Gambhir, Ashok Mahajan and Sunita Kripalani, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, J.—The issue involved in this appeal on certificate from a judgment and order of the Madhya Pradesh High Court dated January 4, 1972 is as to the powers of the State Government u/s 106 of the Madhya Pradesh Panchayats Act, 1962 to modify or alter the constituencies of a block once delimited by a notification issued thereunder after the process of election of members of the Janapada Panchayat has started; particularly, without affording an opportunity to the electorate to raise any objection. On the question involved, conflicting views have been expressed by two Division Benches of the High Court and the High Court certifies that the question raised is one of frequent occurrence and great importance.

2. By the judgment under appeal, a Division Bench of the High Court has held that the provisions of the Act do not confer any power on the State Government to modify or alter the constituencies once fixed by a notification issued under Sub-section (1) of Section 106 of the Act and fixing the number of members to be elected from each constituency. It accordingly struck down the impugned

notification issued by the State Government dated November 25, 1970 under Sections 105 and 06 of the Act purporting to restructure the constituencies of the Manasa Mock.

3. Put very briefly, the essential facts are these. After the establishment of Gram Sabhas throughout the State u/s 3 of the Act, the State Government in accordance with Section 103 divided the Mandsaur District into eight blocks with Manasa Block as one of them where a Janapada Panchayat was to be established. Under Sections 105 and 106 of the Act, the State Government by a notification dated September 26, 1969 divided this Block into twenty constituencies from which the representatives of the Janapada Panchayat, Manasa were to be elected, with one representative to be elected from each constituency. After the constituencies were notified, the elections to the Gram Panchayats in the block were completed on November 8, 1970 and they were duly notified by the Collector, Mandsaur on November 14, 1970. On the same day, the new Gram Panchayat assumed office. On November 25, 1970, the State Government published a notification purporting to be u/s 106 of the Act for a re-distribution of the constituencies of the block. On November 29, 1970, the Collector also issued a notification reallocating the reserved seats for the Scheduled Castes and Scheduled Tribes. The respondent who had been elected as the Sarpanch of the Gram Sabha, Alhed and was thus qualified to contest the elections of the President and Vice-President of the Janapada Panchayat, Manasa, filed a petition in the High Court under Article 226 of the Constitution challenging the validity of the impugned notification dated November 25, 1970 issued by the State Government for re-delimitation of the constituencies of the block and the notification by the Collector dated November 29, 1970 for the reallocation of the reserved seats for the Scheduled Castes and Schedule Tribes. In assailing the validity of the impugned notification dated November 25, 1970, the respondent pleaded, inter alia, that the State Government had not statutory power u/s 106 of the Act to alter or modify the constituencies once the same had been notified and the process of election had started, that the issuance of the impugned notification was mala fide and politically motivated with a view to further the prospects of the party in power and that, even otherwise, assuming that there was such a power in the State Government to alter or modify the constituencies of a block during the progress of election to the Janapada Panchayat, the impugned notification for re-distribution of the constituencies for the Manasa was illegal and inoperative as it had been published without affording an opportunity to the electorate to raise any objection. The respondent, accordingly, sought a writ in the nature of mandamus and other appropriate writs, orders and directions under Article 226 of the Constitution directing the State Government to forebear from giving effect to the impugned notifications.

4. The appellants contested the writ petition filed by the respondent on various grounds, namely : (1) The Gram Panchayats and Janapada Panchayats are two distinct and separate entities and the Act envisages independent elections to be held for the same. (2) The scheme of the Act provides that the Act prescribes for

different procedures for the holding of elections to the Gram Panchayat elections were over on November 14, 1970, it could not be said that a notification modifying the constituencies of the Gram Panchayats could not be issued u/s 106 of the Act. (3) The impugned notification seeking to alter the constituencies did not pertain to the Manasa Block alone but to many other blocks in the district and therefore the allegation that the issuance of the notification was actuated with political motives was wholly without basis. And (4) The provisions contained in Sections 105 and 106 of the Act do not make it obligatory on the part of the State Government to afford an opportunity of raising objections and therefore the State Government was justified in issuing the impugned notification.

5. On a construction of Sub-section (1) of Section 106 of the Act, a Division Bench of the High Court by the judgment under appeal held that the State Government has no power to alter or modify the constituencies of a block once delimited by a notification issued thereunder. The High Court referred to the scheme of the Act, particularly to Section 103 which contemplates the division of blocks into constituencies. In the context, it observed that looking at the provisions of Section 360 or Section 370 of the Act, it was evident that where the legislature thought fit it had expressly conferred powers on the State Government for altering the limits. It referred to Section 360 of the Act which provides for alteration in the limits of Gram Sabhas and Section 370 which provides for alteration in the limits of the blocks and for the purpose of alteration of such limits both of which also provide for the following of a particular procedure. The High Court observed that on the contrary the provisions contained in Section 106 nowhere contemplate the conferral of any such power on the State Government for alteration of constituencies once fixed and notified under Sections 105 and 106 of the Act. It stated that Section 107 was of no avail as it deals with the Constitution of a Janapada Panchayat and does not relate to the delimitation of constituencies as that is specifically provided for in Section 106 of the Act. It then added:

The only question deserving consideration is, as stated above, about the powers of the State Government to do it. Consequently, as discussed above, there is no provision empowering the State Government to alter the constituencies once prescribed and notified under the provisions of Section 106 of the Act. therefore, the notification issued by the State Government, published in the Gazette dated 25th November, 1970 is beyond the powers of the State Government and has, therefore, to be quashed.

These observations must, in our opinion, be construed to mean that when the process of election of members to the Janapada Panchayat starts, the State Government has no power to alter or modify the constituencies of a block once delimited by a notification under Sub-section (1) of Section 106 of the Act.

6. In the appeal, two questions mainly arise, namely : (1) Whether the High Court was right in holding that the provisions of the Act do not contemplate for any amendment of a notification issued earlier under Sub-section (1) of Section

106 of the Act dividing the block into constituencies or fixing the number of members to be elected from each constituency. And (2) Whether the impugned notification for re-structuring the constituencies of the Manasa Block was invalid as it had been issued without affording an opportunity to the electoral to raise any objections. We shall deal with the questions in that sequence.

7. It is urged that the view taken by the High Court was plainly in conflict with the view expressed by an earlier Division Bench in Kalyan Singh Rathor and Others Vs. The State of Madhya Pradesh and Another, . Bishambhar Dayal, CJ., speaking for the Division Bench, repelled the contention that the State Government had no power to modify or alter the Constituencies in a block once fixed by a notification u/s 106 of the Act and stated:

Constituencies could not be unchangeable for ever. So far as Sections 360 and 370 are concerned, they relate to an addition to or subtraction from the area of a Gram Sabha or a particular block. The fixation of constituencies is not a matter of adding to or subtracting from a particular Gram Sabha or block. It is a matter of redistribution of a Gram Sabha into constituencies. That may be necessitated by several reasons from time to time e.g. efflux of population from one Gram Sabha to another or an increase or decrease of population at one place or another and so on. The Legislature did not consider it necessary to provide any standard or circumstances under which only such an amendment could be made by the Government. The power to make amendments in the constituencies in the same block was, therefore, left in the discretion of the Government. Since the power has been vested in the Government, it is expected that the Government will exercise that power in a responsible way and only when it is necessary in the circumstances of the case, and will not, merely for the fun of it, start altering constituencies and including Gram Sabha from one constituency in another.

8. Upon the view that the State Government had the power to alter the constituencies in a block u/s 106 of the Act, as and when, it considered fit, the High Court in Kalyansingh's case held that the exercise of the power by the Government cannot be challenged except on proof of mala fides. In that case, since no mala fides were alleged the High Court declined to invalidate a notification issued by the Government purporting to alter the constituencies of a block, and added:

Since power had been exercised which the Government did possess, it must be assumed that it was for good reasons, although the reasons have not been expressed.

In the present case, however, the High Court has left the question of mala fides untouched.

9. In order to appreciate the contentions raised, it is necessary to deal with the scheme of the Act as it stood at the relevant time. The Act provides for the formation of a three tier Panchayati Raj. At the basic level, there is a Gram Panchayat for a village or group of villages. Section 3 of the Act provides that the

State Government may, by notification, establish a Gram Sabha for a village or group of adjoining villages having a population of 1000 or more and shall specify the name by which the Gram Sabha shall be known and the limits of the area within its jurisdiction. For every Gram Sabha there has to be a Gram Panchayat, as enjoined by Section 10, constituted in accordance with the provisions of the Act. Section 11 enacts that a Gram Panchayat shall consist of 10 elected members and similar additional members depending upon the population, but not exceeding 20 in all. The second level is constituted by what is known as the Janapada Panchayat. Sub-section (1) of Section 103 provides that the State Government may, by notification, divide a district into blocks. Sub-section (2) thereof provides that the notification under Sub-section (1) shall specify the name by which the block shall be known and shall define the limits of the area comprised therein. Section 104 provides that for every block, there shall be a Janapada Panchayat having jurisdiction over the block. Section 105 lays down that every Janapada Panchayat shall consist of such number of members not being less than 15 and no more than 20, as the State Government may, by notification, specify. Section 130 directs that subject to general or special orders as may be issued by the State Government, it shall be the duty of a Janapada Panchayat, so far as the Janapada Panchayat fund at its disposal will allow, to make reasonable provision for the matters enumerated therein. Section 133 provides that subject to the provisions of the Act and the Rules made thereunder, every Janapada Panchayat shall supervise the working of Gram Panchayats within the block and shall render such assistance within the limits of its resources as may be necessary. At the apex of the three tier panchayat hierarchy, there is a Zila Panchayat. Section 166 provides that for every district there shall be established by the State Government, by notification, a Zila Panchayat having jurisdiction over the district. The powers and functions of the Zila Panchayat are described in Section 181. Sub-section (1) of Section 181 provides that subject to the provisions of the Act and the Rules framed thereunder, it shall be the duty of the Zila Panchayat to exercise its powers and functions in relation to subjects enumerated therein. Clause (1) thereof provides that it shall be the duty of the Zila Panchayat to encourage the establishment and foster the development of Gram Panchayats in the district, Clause (ii) to examine and approve the budget of the Janapada Panchayats in the district, (iii) to distribute the funds allotted to the district by the Central and State Government among the Janapada Panchayats in the district, and Clause (iv) enables the Zila Panchayat to supervise the activities of the Janapada Panchayats.

10. Under the scheme of the Act, the Gram Panchayats at the base and the Janapada Panchayat at the second tier in a block are both elected bodies. There is however a vital difference in the mode of election to these bodies. The members of a Gram Panchayat are directly elected by the electorate in a Gram Sabha area while those of a Janapada Panchayat for a block are indirectly elected by an electoral college comprising of the Panchas of the Gram Panchayats in such block. The difference in the mode of election is brought out by these provisions.

Section 12 of the Act lays down that the election and co-option of members of the Gram Panchayats shall be in accordance with the rules made under the Act. In accordance therewith, the State Government framed the Madhya Pradesh Gram Panchayat Election and Co-option Rules, 1963. Chapter II provides for formation of wards and for reservation of seats for members of Scheduled Castes and Scheduled Tribes, Chapter III for preparation of voters' lists, Chapter IV provides for the administrative machinery for the conduct of elections, Chapter V regulates the manner in which elections are to be held, etc. As against this, Sub-section (1) of Section 105 provides that every Janapada Panchayat shall consist of such number of members not being less than 15 and not more than 30, as the State Government may, by notification, specify. Sub-section (2) therefore provides that every Janapada Panchayat shall be composed of (i) elected members, (ii) one member representing the Municipal Corporation, Municipal Councils and Notified Area Committees within the block elected by the Councillors of such authorities from amongst themselves and (iii) all members of the State Legislative Assembly returned from constituencies which wholly or partly fall within the block. As already stated Sub-section (1) of Section 103 provides that the State Government may, by notification, divide a district into blocks. Sub-section (2) thereof provides that the notification under Sub-section (1) shall specify the name by which the block shall be known and shall define the limits of the area comprised therein. Section 106 of the Act which is relevant for our purposes provides for a division of a block into constituencies and runs thus:

106. Division of block into constituencies -

(1) Subject to the provision of Sub-section (2) the State Government shall by notification -

(a) divide a block into constituencies;

(b) fix the number of members to be elected from each constituency.

(2) The ratio between the number of the members to be elected from each constituency in a block and the population of that constituency as ascertained in the last preceding census, shall so far as practicable, be the same throughout the block,

(3) Where there are members belonging to the Scheduled Castes or Scheduled Tribes residing within the block, such number of seats shall be reserved for the members of Scheduled Castes or Scheduled Tribes on the Janapada Panchayat as shall bear, as nearly as may be, the same proportion to the total member of seats in the Janapada Panchayat as the population of the members of the Scheduled Castes or Scheduled Tribes in the block bears to the total population of such area.

11. Sub-section (1) of Section 107 provides that for every block there shall be a list of voters which shall be prepared constituency-wise by the Collector or by any other officer authorized by him in that behalf. Sub-section (2) thereof

provides that every Panch of a Gram Panchayat situate within the block shall be entitled to be registered in the list of voters of the block provided that no person shall be entitled to be registered in the list of voters for more than one constituency. Sub-section (3) provides that every Panch whose name is registered in the list of voters prepared under Sub-section (1) shall be eligible to be an elected member of the Janapada Panchayat. Section 109 provides that subject to the provisions of the Act the election and co-option of a member of a Janapada Panchayat shall be in accordance with the rules made under the Act. In accordance therewith, the State Government framed the Madhya Pradesh Janapada Panchayat Election and Co-option Rules 1963. Rule 3 provides that the Collector or any other officer authorised by him shall subject to the provisions of Section 107 cause a voters' list to be prepared for each constituency by including therein the names of the Panchas of the Gram Panchayats situate within the constituencies in a block. As already mentioned, at the apex is the Zila Panchayat in a district which is a statutory body constituted u/s 167 comprising of (a) Presidents of Janapada Panchayat within the district, (b) members of the Lok Sabha representing Parliamentary constituencies wholly or partly forming part of the district, (c) members of the Rajya Sabha returned from the State and ordinarily residing in the district, (d) members of the State Legislative Assembly representing Assembly constituencies wholly or partly forming part of the district, and (e) district officers representing various departments of the State Government.

12. A close and combined reading of these provisions and the other provisions of the Act which follow hereafter make it quite evident that the actual control over the Gram Panchayat in a block is through the Janapada Panchayat for the block. It would also appear that the result of the elections to the Janapada Panchayat would depend upon the nature of the electoral roll prepared for each constituency in a block. If the State Government were to issue a notification under Sub-section (1) of Section 106 of the Act for redistribution of the constituencies in a block after the process of election has started, it would necessarily change the whole pattern of voting in the election of members to the Janapada Panchayat. This is plainly a typical case of gerrymandering. As is well-known, 'gerrymander' is an American expression which has taken root in the English language, meaning to arrange election districts so as to give an unfair advantage to the party in power by means of a redistribution act or to manipulate constituencies generally.

13. Question of delimitation of constituencies in a block under Sub-section (1) of Section 106 of the Act is connected with the holding of election of members to the Janapada Panchayat. Question of delimitation of such constituencies would necessarily arise when there is an alteration in the limits of Gram Sabha area under Sub-section (2) of Section 361 of the Act which brings about a change in a block or an alteration in the limits of the block under Sub-section (4) of Section 370. It is not necessary for us to go into details except to refer to certain relevant provisions. Amalgamation, splitting up and alteration in the limits of Gram

Sabhas have to be carried out after following the procedure prescribed by Sections 360 and 361. Section 362 provides that where a notification u/s 361 has been issued the State Government may make such consequential orders as it may deem fit in respect of (a) the Constitution of the Gram Sabha and the Gram Panchayat. for the altered area where a local area has been included in or excluded from a Gram Sabha; (b) for the dissolution to the existing Gram Sabhas which have been amalgamated and the Grain Panchayats or subordinate agencies thereof, as the case may be, and the Constitution of the amalgamated Gram Sabha and Gram Panchayat thereafter; (c) the dissolution of the Gram Sabhas split up and the Constitution of the Gram Sabhas established in its place and the Constitution of the Gram Panchayats thereafter and matters ancillary thereto.

14. Alteration of the limits of a block can be effected by the State Government after following the procedure prescribed in Section 370 of the Act. Sub-section (1) of Section 370 provides that the State Government may by notification, signify its intention to alter the limits of a block by including therein any local area in the vicinity thereof or by excluding therefrom any local area comprised therein. Sub-section (2) provides that every such notification shall define the limits of the local area which is intended to be included in or excluded from a block. Sub-section (3) provides that any inhabitant of the area or areas effected by a notification under Sub-section (1) may, if he objects to anything therein contained, submit his objection in writing to the State Government within 60 days of the publication of the notification and the State Government shall take his objection into consideration. Sub-section (4) provides that when 60 days from the date of publication of the notification have expired and the State Government has considered and passed orders on such objections as may have been submitted to it within the said period the State Government may, by notification, include the local area or any part thereof in the block or exclude it therefrom. Section 371 provides that on the issue of a notification under Sub-section (4) of Section 370, the State Government may make such consequential orders as it may deem fit in respect of (i) the Constitution of Janapada Panchayat for the altered area, etc. When there is an alteration in the limits of a Gram Sabha area under Sub-section (2) of Section 361 or in the limits of a block under Sub-section (4) of Section 370, it may be that the State Government would have to issue the requisite notification for delimitation of the constituencies of such altered block under Sub-section (1) of Section 106 of the Act.

15. In the instant case, there was no alteration either in the limits of the Gram Sabha area under Sub-section (2) of Section 361 or of the block under Sub-section (4) of Section 370 and therefore no occasion for the State Government to issue a fresh notification under Sub-section (1) of Section 106 of the Act purporting to restructure the constituencies of the block. We have no doubt in our mind that the impugned notification dated November 25, 1970 issued by the State Government seeking to alter the constituencies of the blocks after the process of election of members to the Janapada Panchayat had started and that

by the Collector dated November 29, 1970 for the reallocation of the reserved seats for the members of Scheduled Castes and Scheduled Tribes were wholly mala fide and intended and meant to gain control over the Janapada Panchayat and were therefore liable to be struck down.

16. The whole purpose of delimitation of a block into constituencies under Sub-section (1) of Section 106 of the Act is to ensure that every citizen should get a fair representation to the Gram Panchayat and in turn to the Janapada Panchayat and the Zila Panchayat. The result of any election under a majority system depends in fact not only on the way people vote but on the way their votes are distributed among the constituencies. It was therefore impermissible for the State Government to redistribute the constituencies in the Manasa Block under Sub-section (1) of Section 106 of the Act so as to give an unfair advantage to the party in power to gain control over the Janapada Panchayat and in turn over the Zila Panchayat. This is precisely what has happened in this case as is clear from the narration of facts. Although the High Court has not touched upon this aspect, it is quite apparent that the act of gerrymandering was to manipulate the result of the Janapada Panchayat and thereby materially affect the Constitution of the Zila Panchayat.

17. Turning to the next question, it is necessary to state that the State Government in exercise of the powers under Sections 105 and 106 of the Act has issued a composite notification dated August 31, 1965 signifying its intention to divide the Manasa Block into twenty constituencies from which the representatives of the Janapada Panchayat were to be elected and invited objections within 30 days from the date of publication of the said notification. After consideration of the objections raised the State Government by notification dated September 26, 1969 divided the block into twenty constituencies with one representative to be elected from each constituency. As already stated the elections to the Gram Panchayats were held on November 8, 1970 and on November 14, 1970 the Collector notified the result of the elections and the Gram Panchayats assumed office on that date. All of a sudden, while the process of election of members to the Janapada Panchayat was on, the State Government issued the impugned notification dated November 25, 1970 under Sub-section (1) of Section 106 of the Act seeking to alter the constituencies of the block. Normally, when the State Government intends to alter or modify the limits of a block, it has to follow the procedure laid down in Section 370 of the Act. Sub-section (3) thereof confers a right on the person affected to raise objections in writing to the proposed alteration and casts a duty on the State Government to consider such objections. It is only upon compliance of the mandatory requirements of Sub-section (3) that the State Government can proceed to issue a notification under Sub-section (4) of Section 370 for the alteration of the limits of a block. That is the normal procedure provided which implies the giving of an opportunity to the persons affected. There was really no occasion for the State Government to have issued the impugned notification dated November 25, 1970 seeking to restructure the constituencies of the block

in the midst of the election. Even if there was such a power, the State Government was in duty bound to publish the proposal giving an opportunity to the persons affected to raise their objections to the proposed alteration. The impugned notification dated November 25, 1970 issued by the State Government under Sub-section (1) of Section 106 of the Act is therefore totally invalid.

18. The result therefore is that the appeal fails and is dismissed with costs.