

(1974) 05 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No's. 93 and 132 of 1972

Surat Ram and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 24-05-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Himachal Pradesh Panchayati Raj Act, 1968 — Section 4(1)

Citation : AIR 1975 HP 23

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : H.S. Thakur, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The petitioners are members of the Gram Sabha, Mandhol, Tehsil Jubbal formerly in the district of Mahasu and now in the district of Simla. The Gram Panchayat, Mandhol was established in 1954, The petitioners say that the inhabitants of the area constitute a compact community with common interests expressed in social gatherings, common fairs and a common deity. It is also alleged that they have common grazing rights and lands within the local limits of the Gram Panchayat.

2. In Civil Writ Petition No. 93 of 1972 the petitioners plead that because they constituted a compact community there should be no division of the community by the splitting up of the Gram Sabha into independent Gram Sabhas. It was apparently apprehended that the State Government was proceeding to do so. The inhabitants of the Sabha area represented against that move of the Government, but apparently to no avail. The Government replaced the existing Gram Sabha by three new Gram Sabhas, those of Mandhol. Nakrari and Kot. Aggrieved by this action of the Government the petitioners then filed this Writ petition, challenging the validity of the action of the Government. The respondents filed a return to the writ petition, to which they annexed a copy of a

resolution purporting to be one passed by the inhabitants of the area in which it was suggested that the Gram Sabha should be partitioned along certain lines. When the writ petition came on for hearing learned counsel for the petitioners referred to the copy of the resolution of the Gram Sabha annexed to the return and stated that if the manner of partition indicated in that resolution was adopted by the State Government the petitioners would have no grievance left. Having made that statement, learned counsel for the petitioners withdrew the writ petition. It appears, however, that the State Government maintained the three new Gram Sabhas created by it and to the disappointment of the petitioners did not re-constitute the Gram Sabhas along the lines suggested in the copy of the resolution annexed to the aforesaid return. In the belief that when learned counsel for the petitioners had made the statement mentioned above and the learned Advocate General had not made any contrary statement or submission at that stage the State Government should be taken to have accepted the position indicated by learned counsel for the petitioners and to have given the assurance that the Gram Sabha would be divided along the lines, suggested in the copy of the resolution annexed to the return, the petitioners now filed a miscellaneous petition (CMP No. 19 of 1973) alleging that the State Government had gone back upon the position taken by it when the writ petition was withdrawn and that, therefore, this Court should recall its order dismissing the writ petition and restore the case for decision on the merits. The miscellaneous petition has been opposed by the State Government, which has taken the stand that the learned Advocate General did not extend any assurance either expressly or by conduct that the Gram Sabha would be divided along the lines suggested in the copy of the resolution annexed to the return and therefore, no question arose of reviving the writ petition.

3. Meanwhile, a number of persons, including the aforesaid petitioners, filed Civil Writ Petition No. 132 of/1972. That writ petition proceeds on the assumption that the learned Advocate General gave an assurance on behalf of the State Government to the petitioners that the Gram Sabha would be bifurcated in the manner suggested by the copy of the resolution annexed to the return of the earlier writ petition and as that was not done the petitioners were entitled to mandamus requiring the State Government to act upon that assurance and to hold the elections of Gram Panchayats in respect of the Gram Sabhas as constituted on the basis of that assurance.

4. So far as Civil Miscellaneous Petition No. 19 of 1973 is concerned, it does appear that during the hearing of the writ petition learned counsel for the petitioners was carried away by the impression that by annexing the copy of the resolution to its return the State Government was proposing to divide the Gram Sabha in the manner suggested in that resolution. The fact that learned counsel was under that impression is borne out by the order recorded by the Court on September 18, 1972 disposing of that writ petition :--

"Shri H.S. Thakur, learned counsel for the petitioner, states that in view of

Annexure R-I to the return filed by the respondents indicating that the election will be on the basis of the division shown therein, he does not press this writ petition. In the circumstances, the writ petition is rejected."

There can be no doubt that learned counsel for the petitioners was influenced by that impression in deciding to withdraw the writ petition. There is also no doubt that when learned counsel made that statement there was no comment or submission on behalf of the State Government that the impression was erroneous and that the State Government would continue to maintain the position assumed by it when it replaced the original Gram Sabha by three new Gram Sabhas. Apparently taking the silence of the learned Advocate General to imply concurrence in the statement made by learned counsel, the latter stated that he did not press the writ petition. It is clear beyond dispute that the writ petition was withdrawn in a moment of misunderstanding. The circumstances existing at the time contributed to that misunderstanding. It is in the interests of justice that the petitioners should not suffer because of that misunderstanding. I am of opinion that the writ petition should be revived. In the circumstances, I recall the order dated September 18, 1972 dismissing the writ petition and restore it to its original number for decision on the merits. The miscellaneous petition is accordingly allowed.

5. Now turning to the merits of the writ petition the question is whether the petitioners are entitled to the relief claimed by them in this writ petition. The petitioners challenge the power of the State Government to re-constitute the Gram Sabha by so partitioning it that three new Gram Sabhas, those of Mandhol, Nakrari and Kot, now replace the original Gram Sabha of Mandhol. The petitioners have pleaded that the manner in which the three new Gram Sabhas have been drawn up would produce great social and economic injustice to the inhabitants of the Sabha area and a compact community would be divided into three smaller sections resulting in a setback to their common interests. While all this may be true, and it is not for the Court to express any opinion in this matter, the question essentially is whether this Court in the exercise of its jurisdiction under Article 226 of the Constitution can interfere. Section 4 (1) of the Himachal Pradesh Panchayati Raj, Act, 1968 empowers the Government to declare "'any village or group of contiguous villages with a population of not less than five hundred and more than five thousand to constitute one or more Sabha Areas". There is a proviso which excludes a Cantonment, Municipality or Notified Area or Small Town Committee from being included in a Sabha area. Nothing more is provided to indicate the limits of the power of the Government in constituting a Sabha Area. The only limitations expressed in Section 4 (11) of the Act are (a) if more than one village is constituted in a single Sabha Area they must be contiguous villages and (b) the population of the village or group of villages should not be less than five hundred and not more than five thousand. Beyond those two principles the matter has been left entirely to the administrative discretion of the Government. It is for the Government to judge whether the constitution of the Sabha Area is such as will benefit the inhabitants of the Sabha

Area It may be open to the inhabitants of the area to represent against a particular constitution of a Sabha Area, and that representation may lie before a certain forum. That forum is not this Court exercising jurisdiction under Article 226 of the Constitution. Inasmuch as the question lies outside the jurisdiction of this Court, this writ petition must fail.

6. As regards Civil Writ Petition No. 132 of 1972, from what has been said above it is clear that no assurance was extended on behalf of the State Government that the Gram Sabha would be constituted on the lines suggested in the copy of the resolution annexed to the return filed to the State Government in Civil Writ Petition No. 93 of 1972. That being so this writ petition must also fail.

7. Both the writ petitions are dismissed. There is no order as to costs.