

(2021) 01 SHI CK 0157

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4024 Of 2020

Yuva Sangathan Seobagh And Another

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 08-01-2021

Acts Referred:

Himachal Pradesh Panchayati Raj Act, 1994 — Section 3, 4, 10, 35, 120(1), 140

Citation : (2021) 01 SHI CK 0157

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Gautam Sood, Ashok Sharma, Vinod Thakur, Vikas Rathore, Shiv Pal Manhans, Bhupinder Thakur, Yudhvir Singh Thakur, Dalip K. Sharma, V.S. Chauhan, Ajay Singh Chauhan

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The precise case of the petitioners is that they and other residents of village Seobagh made several representations to the respondents with regard

to declaration and formulation of village Seobagh as a new Gram Sabha area.

2. On 22.08.2020, respondent No.1 issued notification thereby bifurcating and reorganizing various Gram Sabhas within District Kullu, however, village

Seobagh is not included in the said notification. Therefore, the petitioners alongwith about 445 residents of village Seobagh made representations to the

Government at State and District level for formulation and declaration of village Seobagh as a new Gram Sabha area.

3. It is pleaded by the petitioners that in the last week of August, 2020 concerned officials alongwith residents of village Seobagh submitted a detailed report and certificate by completing all codal formalities to the Block

Development Officer for formulation of village Seobagh as Gram Sabha and consequent Panchayat. On 01.09.2020, detailed report of the officials alongwith representations of the petitioners and residents of village Seobagh was forwarded to the District Panchyat Officer, Kullu, i.e. respondent No.3, who inÂturn, vide his letter dated 2. 09.2020 returned the aforesaid letter with the objections that the representation was not signed by the Pradhans and Secretaries of Gram Panchayats Kias and Gahar. It is further case of the petitioners that the Pradhans and Secretaries of the Gram Panchayats Kias and Gahar refused to sign the representation stating that there is no resolution of Gram Sabhas for formulation and declaration of village Seobagh as a new Gram Sabha, which according to them was a condition precedent.

4. On 03.09.2020, the Block Development Officer again sent a representation alongwith detailed report of the officials to respondent No.3 and asked him to process the same in accordance with law. However, respondent No.3 did not comply with the said instructions and informed the petitioners that their representation cannot be processed in absence of resolution of Gram Sabha and signatures of Pradhans and Secretaries of both Gram Panchayats Kias and Gahar.

5. It is in this background that the instant writ petition has been filed for the grant of following substantive relief:

â??It is, therefore, prayed that the present writ petition may very kindly be allowed and writ of mandamus or any other appropriate, writ order or direction be issued thereby directing the respondents to declare village Seobagh, Tehsil and District Kullu as Gram Sabha area as per Section 3 of the

Himachal Pradesh Panchayati Raj Act, 1994, letter and detailed report of the officials (Annexure PÂ6) and notification dated (Annexure PÂ3) and

further issue any appropriate and necessary orders and directions that resolution of existing Gram Sabha for constitution and declaration of new Gram

Sabha Area is not a condition precedent or mandatory requirement for declaration and formation of new Gram Sabha area, demand of any such

resolution as a condition precedent or a mandatory requirement for declaration and formation of New Gram Sabha Area is illegal and ultraÂvires of

The Himachal Pradesh Panchayati Raj Act, 1994 or such other orders, direction or writ as this Honâ??ble Court deems fit and proper to meet the

ends of justice be also passed on this petition in the ends of law and justice. Costs of the petition be also allowed to the petitioners against the respondents.â??

6. Respondents No. 1 to 3 contested the petition by filing reply wherein it is averred that the proposal for bifurcation/ reÂ organization of Gram

Panchayats Kais and Gahar was received through the Block Development Officer on 01.09.2020 whereby it was proposed to constitute a new Gram

Sabha, Seobagh by bifurcating some part of Gram Panchayat Kias and part of Gram Panchayat Gahar, but this proposal was found incomplete as per

the criteria laid down by the competent authority. The Government has laid down the criteria for creation of new Gram Sabhas vide letter dated 20th

August, 2020 in which the criteria for nonÂtribal areas (this criteria also applicable to backward area) described as, the new Gram Sabhas from those

existing Gram Sabhas will be created, total population is equal to and more than 2000, number of household equal to and more than 500, number of

villages equal to and more than 5 and distance of the farthest village from the existing headquarter of the Gram Sabha is equal to and more than 5 Km

subject to the condition that minimum resultant population of the existing and newly Gram Sabha before and after bifurcation is minimum 600. This

criteria has again been amended by the Government vide letter dated 04.08.2020 and 04.09.2020. This proposal was submitted without due signatures

of the Pradhans /Secretaries of the Gram Panchayats Kais and Gahar and further this proposal was also not signed /verified by the concerned Block

Development Officer. Even the land details with regard to the villages mentioned in the proposal and the resolutions of Gram Sabha Gahar and Kais

were also not enclosed. Due to these shortcomings, the proposal was returned, in original, to the concerned Block Development Officer vide letter

dated 02.09.2020.

7. Gram Panchayat, Kais which has been arrayed as respondent No.4 contested the petition by filing reply wherein preliminary objection qua

maintainability of the petition was raised. In addition thereto, it is claimed that in absence of mandatory provisions of Section 3 of the Himachal

Pradesh Panchayati Raj Act, 1994 (for short â??Actâ??) and in absence of any resolution of Gram Sabha, new Gram Sabha in village Seobagh

cannot be constituted. It is averred that in Gram Panchayat Kais, Panchayat

office is situated in the middle of Seobagh itself and, therefore, there is no question of any hardship or inconvenience caused to the people of Seobagh village or the residents of Gram Panchayat Kais.

8. Gram Panchayat, Gahar has though not filed any formal reply, but has placed on record certain documents, which clearly prove that as regards this

Gram Panchayat, it is not at all in favour of bifurcation for the purpose of creating and constituting a new Gram Sabha, Seobagh.

9. We have heard learned counsel for the parties and have gone through the material placed on record.

10. Section 3 of the Act, reads as under:Â?

3. Declaration of Sabha area.Â (1) The Government may, by notification, declare any village or group of contiguous villages with a population of not

less than one thousand and not more than five thousand to constitute one or more Sabha areas for the purposes of this act and also specify its

headquarter:

Provided that in a Scheduled area the Government may by order declare any village or group of contiguous villages with a population of less than one

thousand to constitute a Sabha area:

Provided further that the Government may, after having due regard of the geographical location, lack of means of transport and communication and

administrative convenience, declare an area comprising a village or group of contiguous villages having a population either less than one thousand or

more than five thousand to constitute a Sabha area.

(2) The Government may, at the request of the Gram Sabha concerned or otherwise, and after previous publication of a proposal by a notification, at

any time,Â?

(a) increase any Sabha area by including within such Sabha area any village or group of villages; or

(b) diminish any Sabha area by excluding from such Sabha area any village or group of villages; or

(c) alter the headquarter of any Sabha area; or

(d) alter the name of any Sabha area; or

(e) declare that any area shall cease to be a Sabha area: 2[*****]

3[(2ÂÂ) When on account of the reason that the Sabha area is, during the term

of the Gram Panchayat, increased or diminished or ceased under sub-section (2), the increase or diminution or cessation of the Sabha area shall not affect the term of the office bearers of Gram Panchayat, till the expiration of the duration of the Gram Panchayat specified in sub-section (1) of section 120 or its dissolution under section 140 of this Act.]

(3) If the whole of the Sabha area is included in a municipality, the Sabha area shall cease to exist and its assets and liabilities shall in the manner prescribed be disposed of.

11. It would be noticed that unlike other provisions of the Act, Section 3 thereof does not envisage impliedly much less expressly postulate an opportunity for inhabitants of the area to file objections and being heard before ordering bifurcation of the Panchayat(s).

12. Once the legislature, in its wisdom, has not chosen to provide for any opportunity of hearing for inhabitants of the area and to file objections, as aforesaid, the same cannot be presumed or read into as it would amount to legislating or re-writing the provision, which indisputably is beyond the domain of this Court. What is not expressly provided cannot be presumed by necessary implication.

13. It cannot even be remotely suggested that the legislature by default omitted to provide the right to file objections and be heard under Section 3 of the Act. In fact, it is by a conscious legislative decision that such a right is designedly not acknowledged under Section 3 of the Act. Procedural requirement of hearing is not required in the exercise of legislative power unless such a right or hearing was expressly provided.

14. In coming to such conclusion, we are fortified by the decision rendered by the Hon'ble Supreme Court in State of Punjab vs. Tehal Singh and ors.

(2002) 2 SCC 7, wherein it was held that determining the territorial area of a Gram Sabha and thereafter establishing a Gram Sabha for that area is an

act, legislative in character, in the context of the provisions of the Act and hence, does not subject to rules of natural justice. It was further held that

the enactment may provide for observance of principles of natural justice and if the provisions are there, the same should be observed and if provisions

do not provide for the same, the residents of the area cannot insist for giving an opportunity of hearing. It shall be apt to reproduce relevant

observations as contained in paras 5 to 9, which read as under:Â?

5. Before we consider the main question, it is necessary to trace out the nature of power, that the State Government exercises under provisions of

Sections 3 and 4 of the Act. The said power could either be legislative, administrative or quasi-judicial.

6. In *Rameshchandra Kachardas Porwal and Ors. etc. v. State of Maharashtra and Ors. etc.*, [1981] 2 SCC 72, it was held that making of a

declaration by notification that certain place shall be principal market yard for a market area under the relevant agricultural produce Market Act was

an act legislative in character. In *Union of India and Anr. v. Cynamide India Ltd. and Anr.*, [1987] vol. 2 SCC 720, this Court while making distinction

between legislative, administrative and quasi-judicial held thus:

A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the

making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy.

Legislation in the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration

is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases'. It has

also been said: "Rule making is normally directed toward the formulation or requirements having a general application to all members of a broadly

identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situation". But, this is only a broad distinction, not

necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular

application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates

the future cause of action. Adjudication is determinative of the past and the present while legislation is indicative of future. The object of the rule, the

reach of its application. The rights and obligations arising out of it. Its intended effect on past, present and future events, its form, the manner of its

promulgation are some factors which may help; in drawing the line between legislative and non-legislative acts".

7. The principles of law that emerge from the aforesaid decisions are (I) where provisions of a statute provide for the legislative activity, i.e. making

of a legislative instrument 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 an action forthwith which 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 a particular situation and (3) lay down future course of actions, the same its generally held to be legislative in character.

8. Viewed in the light of the statement of law stated hereinbefore, we find that 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 Sections 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. Under the aforesaid situation, when declarations by issue of notifications by the Government are made under Sections 3 and 4 of the

Act respectively, determining the territorial area of a Gram Sabha and establishing a Gram Sabha for that area, such declarations become operative at

one. Once declarations are made under Sections 3 and 4 of the Act respectively and thereafter a Gram Panchayat is constituted under Section 10 of

the Act, the entire remaining provisions of the Act becomes operative. On such declarations by a notification in the gazette, the Gram Sabha's body

corporate comes into being with a number of powers and functions conferred upon it under the Act. As soon as a Gram Sabha is established and

Gram Panchayat is constituted, they are entrusted with many general functions viz., constructions, repair, and maintenance of community assets,

agriculture including agriculture extension, animal husbandry, dairy and poultry, fisheries, social and farm forestry, minor forest produce fuel and

fodder, khadi, village and cottage industries, rural housing, rural electrification including distribution of electricity, non-conventional energy source,

poverty alleviation programme, education including primary and secondary schools, adult and non-formal education, promotion of adult literacy,

cultural activities, fairs and festivals, public health and family welfare; women and child development, social welfare etc. Further, Gram Sabhas and

Gram Panchayats have been conferred numerous other powers and duties enumerated in Section 35 of the Act. Besides that, the Gram Panchayat is

entrusted with the judicial functions which are civil and criminal in nature. The power exercisable under Sections 3 and 4 of the Act respectively by

the Government was, therefore, not an exercise of a judicial or quasi-judicial function where the very nature of function involves the principle of

natural justice or in any case of an administrative function effecting the rights of an individual. We are, therefore, of the view that on making of

declaration under Section 3 of the Act determining the territorial area of a Gram Sabha and thereafter establishing a Gram Sabha for that area is an

act legislative in character in the context of the provisions of the Act.

9. Once it is found that the power exercisable under Sections 3 and 4 of the Act respectively is legislative in character, the question that arises is

whether the State Government, while exercising that power, the rule of natural justice is required to be observed? It is almost settled law that an act

legislative in character—primary or subordinate, is not subjected to rule of natural justice. In case of legislative act of legislature, no question of

application of rule of natural justice arises. However, in case of subordinate legislation, the legislature may provide for observance of principle of

natural justice or provide for hearing to the resident of the area before making any declaration in regard to the territorial area of a Gram Sabha and

also before establishing a Gram Sabha for that area. We have come across many enactments where an opportunity of hearing has been provided for

before any area is excluded from one Gram Sabha and included it in different Gram Sabhas or a local authority. However, it depends upon the

legislative wisdom and the provisions of an enactment. Where the legislature has provided for giving an opportunity of hearing before excluding an

area from a Gram Sabha and including it in another local authority or body, an opportunity of hearing is sine qua non and failure to give such an

opportunity of hearing to the residents would render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for any

opportunity of hearing or observance of principle of natural justice before issue of a declaration either under Section 3 or Section 4 of the Act, the

residents of the area cannot insist for giving an opportunity of hearing before the area where they are residing is included in another Gram Sabha or

local authority. In *Rameshchandra Kachardas Porwal and Ors. v. State of Maharashtra* (supra), this court held as thus:

In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was

the duty of the concerned authority to invite and hear objections. Failure to do so was a violation of the yard at one place and establishing it elsewhere

was, therefore, bad. It was objections before a "'market area'" was declared under the Act, so should objection be invited and heard before a 'market

yard' was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with

the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an

administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned

with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a

market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow

forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of

natural justice.

15. In view of aforesaid exposition of law, we are clearly of the view that the power exercisable under Section 3 of the Act by the Government is not

an exercise of a judicial or quasi-judicial function, where the very nature of function involves the principles of natural justice or in any case of an

administrative function affecting the rights of an individual. As observed above, the function is legislative in character.

16. In this background, further question which arises for consideration is â?" whether Gram Panchayats Kais and Gahar were under any legal

obligation to have attended to the objections that were raised by respondent No.3 on the resolution that was forwarded by the petitioners and other

residents.

17. Gram Panchayats and Gram Sabhas are legally constituted bodies, whereas the associations, societies are not bodies that are recognized under the

Act. This is primarily based upon the concept of democracy â??of the peopleâ? and â??by the peopleâ? and â??for the peopleâ?. The resolution seeking

bifurcation of a Gram Sabha has to be backed by majority of people and should invariably be moved by Gram Sabha as it represents the voice of the

majority of the persons to a democratic elected institution of Gram Panchayat. However, we could visualize a case where an elected representatives

have with course of time lost the confidence of the people or such majority of persons could by authorisation of the break away group from one or

more Panchayat in which they are currently residing like the Government to constitute a separate Gram Sabha and they also fulfill all eligibility

conditions as stipulated in the Act/Rules. It would only be in such an exceptional circumstance, that too, after weighing all pros and cons that

competent authority or Court may entertain the writ petitions and pass necessary directions.

18. However, in the instant case, it would be noticed that it is the specific case of the petitioners that it has backing of about 445 residents of the

village which clearly falls short of the criteria of population for creation of a new Gram Sabha as prescribed in the Government instructions issued vide

letters dated 19.01.2019, 11.12.2019, 04.08.2020 and amended vide letter dated 02.09.2020.

19. In the given circumstances, we are clearly of the opinion that in the instant case the Presidents and Secretaries of respondents No. 4 and 5 were

well within their rights of not removing the queries/objections as forwarded to them as they did not and cannot be compelled to support the claim of the

petitioners.

20. In view of the aforesaid discussion, we find no merit in the instant petition and the same is accordingly dismissed, so also the pending

miscellaneous application(s), if any.