

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.589 of 2012**

1. Rishi Kumar Sharma, Son of Late Banarasi Das Sharma, aged about 50 years, Up-Sarpanch, Gram Panchayat Patrapali, Resident of Transport Nagar Raigarh (Chhattisgarh)
2. A. Tirkey, Son of Late Shri Khesho Tirkey, aged 67 years, Ex-Sarpanch, Gram Panchayat Patrapali, Raigarh (CG)
3. Raju Chouhan, Son of Shri Hadippa Chouhan, aged 27 years, Panch, Ward No.1
4. Smt.Maya Bai, Wife of Shri Samru Sidar, aged 28 years, Panch, Ward No.19,
5. Smt.Malti Devi, Wife of Shri Krishna Singh, aged 38 years, Panch, Ward No.10,
6. Smt.Ugni Bai, Wife of Sri Dilchand Shrivastava, aged 35 Years, Panch, Ward No.14,
7. Smt. Gomti Chouhan, wife of Ramkumar Chouhan, aged 29 years, Panch, Ward No.5,
8. Smt. Phoolmati Chouhan, W/o Mehattar Chouhan, aged 29 years, Panch, Ward No.8,
9. Smt. Shakira Bano, Wife of Shri Ishaque Hussain, aged 38 years, Panch, Ward No.6,
10. Smt. Urmila Yadav, Wife of Shri Subhash Yadav, aged 42 years, Panch, Ward No.18,
11. Smt. Kaushalya Gupta, Wife of Shri M.L. Gupta, aged about 53 years, Panch
12. Pramod Singh, son of Shri Nagender Singh, aged about 40 years, Panch, Ward No.12,

Petitioner No.2 to 12 are All Panchas of different Wards of Gram Panchayat Patrapali, Tahsil & District Raigarh (Chhattisgarh)

---Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Urban Administration and Development Department Mantralaya, D K S Bhawan Raipur (Chhattisgarh)
2. Collector, District Raigarh (Chhattisgarh)
3. Municipal Corporation, Raigarh through its Commissioner, Municipal Corporation, Raigarh (Chhattisgarh)

---Respondents

And

WPC No.757 of 2012

1. Bharat Sidar, son of late Shri Phoduram Sidar, aged about 53 years, Ex-Sarpanch, Gram Panchayat Saraipali, Resident of Village Barmuda Gram Panchayat Saraipali Raigarh (Chhattisgarh)
2. Sundar Das, Son of Late Shri Udairam, aged 46 Years, working as Peon, on contract basis in Gram Panchayat Saraipali, Raigarh

(Chhattisgarh)

---Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Urban Administration and Development Department Mantralaya, D K S Bhawan Raipur (Chhattisgarh)
2. Collector, District Raigarh (Chhattisgarh)
3. Municipal Corporation, Raigarh through its Commissioner, Municipal Corporation, Raigarh (Chhattisgarh)

---Respondents

For Petitioners	: Mr.Ashish Shrivastava, Advocate
For Respondents No.1 & 2	: Mr.D.R.Minz, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

17/05/2018

1. Since common question of law and fact is involved in the present writ petitions, they are heard together and being disposed of by this common order.
2. By way of these writ petitions, the petitioners herein call in question the notification of the State Government, whereby Gram/Gram Panchayat, Patrapali and Gram Panchayat Saraipali have been included in the Municipal Corporation limits of Raigarh by notification dated 17.11.2009 in exercise of the provisions contained in Section 405 (3) of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter called as "the Act of 1956").
3. Mr.Ashish Shrivastava, learned counsel for the petitioners would submit that inclusion of Gram/Gram Panchayat Patrapali and Gram Panchayat Saraipali in the Municipal Corporation limits of

Raigarh is in violation of the principles of natural justice and being contrary to law is liable to be set aside.

4. On the other hand, Mr.D.R.Minz, learned Deputy Government Advocate for respondents No. 1 and 2/State, would oppose the writ petitions.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
6. The State Government in exercise of powers conferred under Section 405 (1) of the Act of 1956 has expressed the intention of constitution of the Municipal Corporation, Raigarh including Gram/Gram Panchayat Patrapali and Gram Panchayat Saraipali in the Municipal Corporation limits of Raigarh inviting objections within 30 days from the date of publication of the intention in the "Chhattisgarh Rajpatra" for consideration of the State Government and after having decided the objections issued final notification on 7th June, 2011 under Section 405 (3) of the Act of 1956 including Gram/Gram Panchayat, Patrapali and Gram Panchayat Saraipali within the Municipal Corporation limits of Raigarh.
7. At this stage, it would be appropriate to notice Section 405 of the Act of 1956 which states as under:-

"405. Power of Governor to include or exclude certain area.-(1) The Governor may, by notification in the gazette, declare the intention to include within or exclude from the limits of the city, any specified area.

(2) If the local authority having jurisdiction in the said area or any person resident therein, objects to such declaration, such authority or person may submit an objection in writing to the

Collector “within a prescribed period” and Governor shall take such objection into consideration.

(3) When the said period has expired and the Governor has considered the objection under subsection (2), the Governor may by notification, include within or exclude from the limits of the city any specified area:

Provided that when an area is excluded from the limits of any municipal area, such area notwithstanding such exclusion shall continue to be within the limits of the municipal area until the area so excluded in a duly constituted Panchayat area.”

8. Now the question for consideration would be whether the constitution of a Municipality or extension of its boundaries is an administrative or legislative function and whether such action can be interfered with in exercise of judicial review by this Court?

9. A Division Bench of the High Court of Madhya Pradesh in the matter of **Rajdhar Singh v. State of M.P. and another**¹ relying upon the judgment of the Supreme Court in the matter of **Sunderjas Kanyalal Bhathija v. Collector, Thane**² held that action of the State grouping two or more villages as a unit of local government, in exercise of the statutory powers under the M.P. Panchayat Raj Adhiniyam (1 of 1994) is legislative in character and, therefore, interference by the High Court is impermissible.

10. In **Tulsipur Sugar Co. Ltd. v. Notified Area Committee, Tulsipur**³ the Supreme Court has held that creation of Notified Area Town Area cannot be challenged on the ground that no opportunity of hearing was provided.

¹ 1995 MPLJ 152

² AIR 1990 SC 261

³ (1980) 2 SCC 295

11. In the matter of **Sunderjas Kanyalal Bhathija** (supra), it has been held by the Supreme Court that the rules of natural justice are not applicable to legislative activities and the constitution of Nagar Panchayat is a legislative activity.

12. In the matter of **State of Punjab v. Tehal Singh**⁴, a challenge was made to the establishment of Gram Sabha Khanpur and its territorial area without affording any opportunity of hearing to the residents of the area. In para 9 the Supreme Court rules thus:-

“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 principles 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.”

13. Thus, I am of the considered opinion that extension of boundaries of the Municipal Corporation including Gram Panchayat is a legislative function and the principles of natural justice would not be made applicable therein. Even otherwise, the State Government has considered the objections against preliminary notification and the petitioners have not raised such objections even in the preliminary notification issued by the State Government and filed these writ petitions relying upon the objections raised after final notification of inclusion was

4 (2002) 2 SCC 7

published, as such, the State Government has rightly taken into consideration the relevant consideration in inclusion of Gram Panchayat Patrapali and Gram Panchayat Saraipali into the Municipal Corporation limits of Raigarh, which is strictly in accordance with law. I do not find any merit in these writ petitions.

- 14.** Accordingly, the writ petitions being devoid of merit are liable to be and are hereby dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-