

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Reserved on: 15.12.2018

Date of decision: December 19, 2018

CWP No.21715 of 2018 (O&M)

Jarmal Singh

.....Petitioner

Versus

State of Punjab and others

....Respondents

CWP No.16641 of 2018 (O&M)

Gurdit Singh Sarpanch and another

.....Petitioners

Versus

State of Punjab and others

....Respondents

CWP No.24181 of 2018 (O&M)

Kewal Singh

.....Petitioner

Versus

State of Punjab and others

....Respondents

CWP No.27454 of 2018 (O&M)

Gurmeet Singh and others

.....Petitioners

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. N.P.S. Mann, Advocate for the petitioner(s)
(in CWP No.21715 of 2018 and CWP No.24181 of 2018).

Mr. B.S. Sidhu, Advocate for the petitioners
(in CWP No.16641 of 2018).

Mr. I.S. Dhaliwal, Advocate for the petitioners
(in CWP No.27454 of 2018).

Mr. Gurpreet Singh, Advocate
for applicants No.6 to 9 (in CM No.18731-CWP of 2018).

Ms. Anu Pal, DAG Punjab.

Mr. Vivek Chauhan, Advocate for respondent No.7
(in CWP No.21715 of 2018).

Mr. B.S. Kathuria, Advocate for respondent No.7
(in CWP No.24181 of 2018).

Mr. Anupam Gupta, Senior Advocate (*Amicus Curiae*) with
Mr. Ashok Kumar, Advocate.

A.B. CHAUDHARI, J

By way of this common order, above said all four writ petitions are being disposed of.

2. In these civil writ petitions, the challenge is to the actions of the respondents-Government and the Director-cum-Special Secretary, Government of Punjab, Department of Rural Development and Panchayats, Punjab in either forming new Gram Panchayats or de-notifying/bifurcating new Gram Panchayat in exercise of power under Section 3 of the Punjab Panchayati Raj Act, 1994 (for short 'Act of 1994').

FACTS

3. The necessary facts in individual writ petitions are stated as under:-

CWP No.21715 of 2018

- a) Gram Panchayat, Village Valtoha, Sandhuan, District Tarn Taran has been ordered to be divided by creation of Gram Panchayat of village Adda Valtoha in addition by issuing notification dated 31.07.2018 (Annexure P-13) in exercise of power under Section 3 of the Act of 1994. In brief, the petitioner in this writ petition has averred that the Panchayat Secretary Shri Satnam Singh, custodian of the record of Gram Panchayat Valtoha Sandhuan mislead some

of the members of the Gram Panchayat including the petitioner-Sarpanch and obtained their signatures telling them that the cheques were required to be issued urgently and keeping the space vacant in the original proceeding book and thereafter, he filled in the gaps in the proceeding book by showing resolution dated 18.08.2017 for bifurcation of Gram Panchayat Valtoha Sandhuan into two and thus, he had committed fraud and inserted a forged resolution as if it was passed by the Gram Panchayat. The fact is corroborated as said resolution in the proceeding book is completely silent about total population of both the villages, i.e. the proposed which is carved out and also all other required details. The petitioner having come to know about the mischief approached the authority by various representations and also gave a *munadi* in the village through the Chowkidar that the meeting of the Gram Sabha would be held on 10.09.2017 so also a notice was pasted outside Panchayat *Ghar* as the villagers did not agree for division of Gram Panchayat Valtoha Sandhuan into two vide meeting/notice dated 26.08.2017 (Annexure P-4) of the Gram Sabha. Accordingly, Gram Sabha meeting was held on 10.09.2017 (Annexure P-5) attended and signed by 907 residents, i.e. the majority of the residents who passed the resolution not to divide the village Gram Panchayat into two and accordingly, request was forwarded to the higher authorities. The said resolution dated 10.09.2017 of Gram Sabha was the last resolution which should have been acted upon by the authorities. Since no response was being given by the authorities, the petitioner approached this Court and this Court directed the authority concerned to decide the grievance made by the petitioner. Finally, order (Annexure P-12) was passed by the Additional Deputy Commissioner (D) holding that the petitioner and others were going back from the resolution they had earlier passed on 18.08.2017 and therefore, the action of division of Gram Panchayat Valtoha Sandhuan into two was confirmed. This is that order which is under challenge in this writ petition.

CWP No.16641 of 2018

- b) Gram Panchayat, Block Jaito, District Faridkot have been divided by the impugned notification dated 06.06.2018 and corrigendum dated 12.06.2018 (Annexure P-1) into Gram Panchayat Dabri Khana Jiwan Singh Wala and Gram Panchayat Gobindgarh in exercise of power under Section 3 of the Act of 1994. In the report made by the Deputy Commissioner, Faridkot from BDPO Jaito, it was stated that the Panchayats and the Sarpanch were not in favour for creation of new Gram Panchayat/Sabha Dabri Khana Jiwan Singh Wala and in fact, by resolution dated 20.10.2017 (Annexure P-6), Gram Panchayat, Gobindgarh had opposed the creation of new Gram Sabha as it does not want any division. Few villagers had, however, given application (Annexure P-7) along with certificate (Annexure P-8) signed by 228 persons to BDPO, Jaito, for separation of Gram Panchayat Dabri Khana Jiwan Singh Wala. According to the petitioner, the *abadi* of Dabri Khana Jiwan Singh Wala is at the distance of 35 feet away from the village Gobindgarh and as such, there was no separate *abadi* and in fact, whole village is a one unit. The creation of new Gram Panchayat is contrary to the provisions of the Act of 1994 and instructions issued by the Department and in the absence of separate *abadi* of two Gram Sabhas. The instructions clearly show the required population and that the *abadi* of the proposed Gram Panchayat should be totally separate from the village, which is not the case in question. The total population of village Gobindgarh is 2858 and the voters are 2117. In other words, the total Gram Sabha members are 2858 out of which 228 persons are of Gram Panchayat as against the others opposing it. The petitioner has therefore, put to challenge this impugned action.

CWP No.24181 of 2018

- c) Gram Panchayat Dasuwal, Block Valtaha, District Tarn Taran was divided into Gram Panchayat Dasuwal Nagar and Gram Panchayat Dasuwal by notification dated 14.03.2018 (Annexure P-5). The process to conduct the election after separation of Gram

Panchayats as aforesaid has almost been completed and separate voters have also been issued so also the wards have also been formed. However, on 11.07.2018, respondent No.6-BDPO, Valtaha (Annexure P-8) wrote a letter to the higher authorities that an application dated 09.07.2018 signed by 150 to 200 persons was received by him for de-notifying formation of new Gram Panchayat Dasuwal Nagar out of Gram Panchayat Dasuwal and accordingly, he recommended de-notification. Finally, without hearing anybody, respondent No.2 on his own issued notification dated 28.08.2018 (Annexure P-9) that is almost after 5 months making de-notification. It is this action which is under challenge, *inter-alia* on the ground that the impugned notification dated 28.08.2018 (Annexure P-9) is arbitrary and without knowledge and consent of the villagers and without following any procedure as such.

CWP No.27454 of 2018

- d) Gram Panchayat, Bhagsar, Tehsil and District Sri Muktsar Sahib which is large village having population of more than 7669, the Gram Sabha decided that it should be divided into two with name New Bhagsar Gram Panchayat and Bhagsar Gram Panchayat. The petitioners submitted all the formalities of passing of resolution etc. and the Deputy Commissioner concerned also recommended the said proposal. However, when the notification in respect of large number of Gram Panchayats in the State, namely 243 was issued, it did not contain division of Bhagsar Gram Panchayat into two, i.e. New Bhagsar Gram Panchayat and Bhagsar Gram Panchayat. The petitioners, therefore, filed writ petition in this Court for deciding representation that was already made making the grievances. Vide order dated 25.07.2018 passed by this High Court, it was directed to decide the representation by passing a speaking order. Accordingly, on 27.08.2018, the representation was rejected with an order, which is wholly illegal and arbitrary. In the order dated 27.08.2018 (Annexure P-7), the order was passed without hearing any of the concerned persons of the Gram

Sabha/Gram Panchayat. The Special Secretary, Punjab Government, Village Development and Panchayats Department gave four reasons for rejection of the representation, which read thus:-

- (i) The proposal made by the Deputy Commissioner, Sri Muktsar Sahib is not in accordance with provisions of Section 3 of the Act of 1994;
- (ii) The proposal is against the instructions dated 26.05.2017;
- (iii) The proposal is not in the interest of public at large;
- (iv) The physical distance of the proposed Gram Panchayat is not clear which is the main condition for constitution of new Gram Panchayat.

4. Replies by way of affidavits have been filed in the respective writ petitions and are on record.

ARGUMENTS

5. When these writ petitions were called out for hearing, learned State counsel raised preliminary objection to the maintainability of these writ petitions on the ground that in the case of **State of Punjab versus Tehal Singh**, 2002 (2) RCR (Civil) 1, decided by the Supreme Court (two judges Bench), it was held that Sections 3 and 4 of the Act of 1994 are in legislative character and in that case, no question of application of natural justice arises. The legislation may provide observance of natural justice, but then that depends on legislative wisdom and the provisions of an enactment. Sections 3 and 4 of the Act do not provide for any opportunity of hearing before any Gram Panchayat is divided or any area is excluded or included and therefore, notification issued under Sections 3 and 4 of the Act of 1994 cannot be held to be bad.

In the light of the said preliminary objection raised by Ms. Anu Pal, DAG Punjab, learned State counsel, it became necessary to deal with the

said preliminary objection before proceeding further in the matters.

This Court requested Mr. Anupam Gupta, learned Senior counsel to assist the Court as *amicus curiae*. He has been kind enough to assist this Court by spending his valuable time with full gumption and gusto which we admire.

6. Learned State counsel placed heavy reliance on the decision in **Tehal Singh's case (supra)** and in particular Paras 4 and 5 thereof, which we quote for convenience and thus, the same read thus:-

“4. 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 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. 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 once. 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.....

5. 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 opportunity of hearing to the residents would render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for only opportunity of hearing or observance of principles 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 others 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."

In the present case, the provisions of the Act do not provide for any opportunity of hearing to the residence before any area falling under a particular Gram Sabha is excluded and included in another Gram Sabha. In the absence of such a provision, the residents of that area which has been excluded and included in a different Gram Sabha cannot make a complaint regarding denial of opportunity of hearing before issue of declarations under Sections 3 and 4 of the Act respectively. However, the position would be different where a house of a particular resident of an area is sought to be excluded from the existing Gram Sabha and included it in another Gram Sabha. There the action of the Government being directed against an individual, the Government is required to observe principles of natural justice. For the aforesaid reasons, we are of the view that no opportunity of hearing was required to be given before making declarations either under Section 3 or Section 4 of the Act by the Government."

7.

Learned counsel for one of the petitioners also placed before us

decision of a Division Bench of this Court in the case of **Gram Panchayat Panj Garaian versus State of Punjab and otehrs**, in CWP No.3976 of 2008, decided on 14.05.2008, in which the decision in **Tehal Singh's case (supra)** has been referred.

8. Ms. Anu Pal, DAG Punjab also cited decisions in the cases of **State of U.P. and others versus Pradhan Sangh Kshettra Samiti and others**, 1995 Supp (2) SCC 305, **M/s Mangalam Organics Ltd. versus Union of India**, 2017 (3) Recent Apex Judgments (R.A.J.) 369.

9. Mr. Anupam Gupta, learned Senior Advocate (*Amicus curiae*) submitted as under:-

- (i) It is true that by virtue of 73rd amendment to the Constitution of India, Panchayat Raj amendment was brought into the constitution and thus, Panchayats and Municipal Committees were given the constitutional status. Commenting on Sections 3 and 4 of the Act of 1994, he submitted that it would make no difference due to the said constitutional amendment, Sections 3 and 4 of the Act of 1994 could be interpreted in any different manner. He submitted that, though, it is true that in **Tehal Singh's case (supra)**, no reference has been made to the said 73rd amendment giving Panchayats the constitutional status. The principals of transparency and openness in governance which have been propounded by the Supreme Court at a later point of time will have to be kept in mind while interpreting to Sections 3 and 4 of the Act of 1994. The larger bench decision of the Apex Court, in fact, support the said view;

It has been contended that creation of Sections 3 and 4 of the Act of 1994 itself undoubtedly is a legislative Act. However, implementation of Sections 3 and 4 of the Act of 1994 by issuing notifications can, by no stretch of imagination, be said to be the act of legislature and that is the point that arises in these writ

petitions;

- (ii) In support of his propositions on the aforesaid legal question, Mr. Anupam Gupta, learned Senior Advocate has cited several decisions and the gist thereof would be cited by us in the present judgment;

10. It was argued by the learned counsel for the petitioners in these writ petitions that in the **Gram Panchayat Panj Garaian's case (supra)**, this Court considered the judgment in **Tehal Singh's case (supra)** and found in that case itself, the Apex Court had taken precaution to consider the physical location of the various arrears, which was being formed into a new Gram Sabha. In that case, the map was seen and it was found that there was a colony which was partly contiguous to one village and came to the conclusion that there was sufficient compliance of the provisions of Sections 3(2) of the Act of 1994. It was pointed out to us that this Court still interfered in the said petition and ordered reconsideration for the reasons given therein.

11. In reply, the learned State counsel vehemently opposed the writ petitions and submitted that the High Court would not be in a position to issue directions to the Government to carry out the division or amalgamation or de-notification of Gram Panchayats in a particular manner as it was not within the domain of the Court to legislate. Learned State counsel, therefore, prayed for dismissal of these writ petitions.

CONSIDERATION

12. We have heard learned counsel for the rival parties at length so also the preliminary objection raised by the learned State counsel.

13. In the case of **Smt. Indira Nehru Gandhi versus Shri Raj Narain, AIR 1975 SC 2299**, interpreting the constitutional provisions, Mathew J., in so far as the relevant aspect in the present case is concerned, stated thus:-

“278. According to the historic analysis, the essence of the distinction between legislative power and judicial power is that the legislature makes new law which becomes binding on all persons over whom the legislature, exercises legislative power; the judicature applies already existing law in the resolution of disputes between particular parties and Judges may not deviate from this duty. This view of the distinction between the obligation to apply and enforce rules and a discretion to modify rules or make new rules was at one time applied uncompromisingly in describing functions as legislative or judicial. Thus, De Lolme said that courts of equity as then existing in England had a legislative function. They are, he said, a kind of inferior experimental legislature, continually employed in finding out and providing law remedies for those new species of cases for which neither the courts of common law, nor the legislature have as yet found it convenient or practicable to establish any.³ Though this would show that neither for logic nor in language has the boundary between legislation and adjudication ever been rigidly and clearly drawn, the distinction between the two is well established.

.....

284. A despotic decision without ascertaining the facts of a case and applying the law to them, though dressed in the garb of law, is like a bill of attainder. It is a legislative judgment.

.....

291. A statute is a general rule. A resolution by the legislature that a town shall pay one hundred dollars to Timothy Coggan is not a statute, John Chipman Gray : Nature and Source of Law, p. 161.

.....

327. A sovereign in any system of civilised jurisprudence is not like an oriental despot who can do anything he likes, in any manner he likes and at any time he likes. That the Nizam of Hyderabad had legislative, judicial and executive powers and could exercise any one of them by a firman has no relevance when

we are considering how a pro-sovereign - the holder of the amending power - in a country governed by a constitution should function.”

14. In so far as the transparency and openness in governance is concerned, the Apex Court in the case of **Cellular Operators Association of India and others versus Telecom Regulatory Authority of India and others**, (2016) 7 SCC 703 stated thus:-

“82. In fact, a judgment of the Court of Appeal in England, being R v. North and East Devon Health Authority, ex p Coughlan, puts the meaning of "consultation" rather well as follows:-

"It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken....

(emphasis supplied)

.....

86. The question of transparency raises a more fundamental question, namely, that of openness in governance. We find that the Right to Information Act of 2005 has gone a long way to strengthen democracy by requiring that the Government be transparent in its actions, so that an informed citizenry is able then to contain corruption, and hold Governments and their instrumentalities accountable to the people of India.”

(emphasis supplied)

.....

89. In another context also this Court has emphasized the importance of openness of governance. In Global Energy Ltd. v.

Central Electricity Regulatory Commission, this Court stated: (SCC p. 589, para 71)

“The law sometimes can be written in such a subjective manner that it affects the efficiency and transparent function of the Government. If the statute provides for pointless discretion to agency, it is in essence demolishing the accountability strand within the administrative process as the agency is not under obligation from an objective norm, which can enforce accountability in decision-making process. All law-making, be it in the context of delegated legislation or primary legislation, has to conform to the fundamental tenets of transparency and openness on one hand and responsiveness and accountability on the other. These are fundamental tenets flowing from due process requirement under Article 21, equal protection clause embodied in Article 14 and fundamental freedoms clause ingrained under Article 19. A modern deliberative democracy cannot function without these attributes.” (emphasis supplied)”

15. In the said decision, finally, vide Para-92, the Apex Court exhorted the parliament to take up the issue in respect of transparency in supporting legislation:-

“92. We find that, subject to certain well defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be "transparent" in the manner pointed out above. Since it is beyond the scope of this judgment to deal with subordinate legislation generally, and in particular with statutes which provide for rule making and regulation making without any added requirement of transparency, we would exhort Parliament to take up this issue and frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is

exercised after due consideration of all stakeholders' submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them. Not only would such legislation reduce arbitrariness in subordinate legislation making, but it would also conduce to openness in governance. It would also ensure the redressal, partial or otherwise, of grievances of the concerned stakeholders prior to the making of subordinate legislation. This would obviate, in many cases, the need for persons to approach courts to strike down subordinate legislation on the ground of such legislation being manifestly arbitrary or unreasonable.”

14. The last judgment which we are referring is on the U.P. Panchayat Raj (Amendment) Act, 1994 that was brought into force. We think the judgment in the **State of U.P. and others' case (supra)** and in particular the concluding para thereof, namely Para-52, is essentially required to be seen. We quote Para-52 of the same, which reads thus:-

“52. We are, therefore, more than satisfied that there were no mala fide intentions on the part of the State Government in giving the short time for submitting the objections and for hearing and disposing them of. We may, however, make it clear that although, as pointed out earlier, the challenge to the delimitation of the panchayat areas on the said grounds could not have been made in the present case after the election notification was issued, the State Government should bear it in mind that if and when the next regrouping of the villages and redetermination of the panchayat areas is undertaken, the authorities will have to give sufficient opportunity to the people of the areas concerned for raising the objections. This is with a view to remove their grievances, if any, with regard to the difficulties, inconveniences and hardships, likely neglect of their interests, domination of certain sections and forces, remoteness of the seat of administration, want of proper transport and communication facilities etc. The opportunity will also provide an occasion for the people to come forward with suggestions for better and more viable,

compact and cohesive regrouping of the villages for efficient administration and economic development. The objections are not to be invited to enable the people to exercise the sort of a right of self-determination which is sought to be spelt out by the High Court. The final decision with regard to the delimitation of the panchayat areas, after hearing the objections and suggestions, will, of course, be that of the State Government acting through Director.”

15. We have carefully seen the clarification that the challenge to the objections, panchayati areas could not have been made after the election notification was issued. The present petitions were, however, filed much before the election notification came to be issued on 05.12.2018 and therefore, we think, we will be entitled to entertain these petitions. A careful look at the aforesaid Para-52 in the **State of U.P. and others' case (supra)** clearly shows that the Apex Court has asked the authorities to give sufficient opportunity to the people of the areas concerned for raising objections to remove their grievances. The aforesaid direction by the Apex Court is binding on the respondents. But what we find is that the orders made are not based on the required criteria or the relevant considerations or in some cases, no hearing took place. In the light of the various principles of law shown to us by Mr. Anupam Gupta, the learned Senior Advocate, we are inclined to hold that implementation of Section 3 of the Act of 1994 by issuing notifications as to the decision/amalgamation of the Gram Panchayat is not a legislative act or legislative function and is rather a quasi-judicial function attracting the principles of natural justice, openness in governance and transparency. In this context, the aforesaid Para-52 has apt application. To sum up, in the light of the above law that is discussed above, we overrule the preliminary objection raised by the learned State counsel and proceed to determine the petitions on their

own merits.

CWP No.21715 of 2018

16. Upon perusal of the impugned order (Annexure P-12) passed by the Additional Deputy Commissioner (D) Tarn Taran, we find that the authority has not found out whether any notice/*munadi* has been made for holding alleged meeting dated 18.08.2017 which is in serious dispute for the division of Gram Panchayat into two. It is further seen that the Panchayat Secretary admitted that he had left some space for filling up at a later point of time. *Prima-facie*, it appears that the grievance made by the petitioner about the fake resolution appears to be correct. But then a thorough inquiry is necessary by the authority which it failed to make. On the contrary, the resolution was passed by the Gram Sabha (not Gram Panchayat) at a later point of time on 10.09.2017 which was preceded by *munadi* in the village so also the notice in the Gram Panchayat *Ghar*. Obviously subsequent resolution dated 10.09.2017 was required to be considered by the authority in the correct perspective. In our opinion, therefore, the authority is required to reconsider the issue by making proper inquiry in the matter as no meeting of Gram Sabha can be held without issuing notice/*munadi* in the village and making the Gram Sabha members aware about any such meeting on such important subject of division of Gram Panchayat. Hence, the issue is required to be reconsidered.

CWP No.16641 of 2018

17. In the reply by way of affidavit of Jaskiran Singh, Director, Department of Rural Development and Panchayats, it is stated that more than 250 inhabitants of village Gobindgarh submitted representation before respondent No.5 for establishing the separate new Panchayat Dabri Khana Jiwan Singh Wala. In the entire reply, there is no consideration whatsoever to

the plea of the petitioners that the Gram Panchayat passed resolution dated 20.10.2017 (Annexure P-6) opposing proposal to divide Gram Panchayat into two. The fact that *abadi* for the separate Gram Panchayat proposed to be created should be totally separate from the village is not at all considered by the authority as can be seen from the omission in reply. On the contrary, the distance is said to be only 100 meters as against the claim of the petitioners that it is only 35 feet. But there is no reply to the said aspect of the matter. We are of the opinion that the issue requires reconsideration.

CWP No.24181 of 2018

18. Respondent No.2 had issued notification on 14.03.2018 (Annexure P-5) dividing Gram Panchayat, Dasuwal Nagar and Gram Panchayat, Dasuwal. It appears that thereafter, on 09.07.2018, 150 to 200 persons requested the division of said Gram Panchayat and accordingly, without knowing the views of the Gram Sabha or the aggrieved persons, on 28.08.2018 (Annexure P-9) de-notification was issued. The grievance made by the petitioner is that the distance between two proposed Gram Panchayat is 2 kilometers and the Gram Sabha meeting was also held preceding notification dated 14.03.2018 when division was affected. No reason has been given as to why de-notification was made when the election process was already separated and the wards, voters list etc. were also separated. We have perused the reply by way of affidavit of respondent No.6-Lal Singh, Block Development and Panchayat Officer, Valtoha, District Tarn Taran. It is not in dispute that while de-notifying the view of Gram Sabha concerned was not taken into consideration by the competent authority. The only answer that is given that as there was recommendation dated 11.07.2018 (Annexure P-8), the de-notification was made. The affidavit in reply mainly is in the form of preliminary objection

already dealt with by us. In other words, there is no consideration whatsoever in respect of the grievance made in the petition. Hence, in our opinion, this issue requires reconsideration.

CWP No.27454 of 2018

19. The grievance of the petitioners is that, though, the village Bhagsar is a large village having population of more than 7699 villagers of Gram Sabha and proposal was recommended by the Deputy Commissioner, Sri Muktsar Sahib for division of Gram Panchayat Bhagsar in the New Gram Panchayat Bhagsar and Gram Panchayat Bhagsar and representation was given, the same has been rejected by order dated 27.08.2018 (Annexure P-7). We have perused the said order dated 27.08.2018 passed by respondent No.2. We have already quoted four reasons given by the said authority for rejection. None of the reasons given by respondent No.2 are germane and are as vague as they could be. In so far as reasons No.1 and 2 are concerned, there is no mention as to what was not done in accordance with the provisions of Section 3 of the Act of 1994 and instructions. Reason No.3 is again vague. Reason No.4 is 'what is the physical distance between both Gram Panchayats is not clear'. In our opinion, it was the duty of the authority to find out the physical distance rather than saying that the same is not clear. We thus, find that all the reasons given in the impugned order are no reasons in the eye of law. Hence, this matter also requires consideration.

The Supreme Court has applied the 'Wednesbury principles of unreasonableness' in India. In the light of factual aspects briefly dealt by us as above, we think the said principles will have application in these matters. On the of the three test is that the decision is so unreasonable that no reasonable authority/person could have decided that way.

20. In CM No.18731-CWP of 2018 in CWP No.16641 of 2018, prayer has been made for impleadment of some parties/addition of parties. Since we are sending all these matters for reconsideration to the authorities concerned after hearing the claims of all the rival parties and by passing speaking order, we think applicants herein who want to join the proceedings/issue, can join before the appropriate authority.

21. In the result, we make the following order:-

ORDER

- (i) CWP No.21715 of 2018, CWP No.16641 of 2018, CWP No.24181 of 2018 and CWP No.27454 of 2018 are partly allowed;
- (ii) CM No.18731-CWP of 2018 in CWP No.16641 of 2018 is disposed of. Applicants in this application are allowed to join the proceedings/issue before the appropriate authority;
- (iii) The State Government/concerned authorities shall reconsider the issues, which are the subject matter of the above writ petitions afresh by giving opportunities to all the rival parties and thereafter, pass speaking order on or before **29.12.2018**;
- (iv) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

December 19, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**