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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8356-2018

Date of Decision : August 23, 2018

Labh Singh and others

.... Petitioners.

Versus

State of Punjab and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Mohd. Yousaf, Advocate
for the petitioner.

Mr. H.S.Sitta, AAG, Punjab,
for respondents No. 1 to 3.

Mr. Chaman Lal Premy, Advocate,
for respondents No. 4 and 5.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing notification dated 14.03.2018 (Annexure P/7) qua the petitioner's Panchayat being illegal, void and against the provisions of Punjab Panchayat Raj Act, 1994 (for short, "**the Act**").

2. Facts relevant for the purpose of decision of this writ petition; that; there is a Gram Panchayat in village Jitwal Kalan and the same consists of 10 elected members including the Sarpanch. In the month of

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May, 2017, Punjab Government issued a letter (Annexure P/1) to all the Block Development and Panchayat Officers of Punjab for sending application for creation of new Gram Panchayats/ Gram Sabha upto 31.08.2017 and the same were to be sent on Proformas - 1 and 2 and check list by the D.D.P.O. and Deputy Commissioners within time and the proposals received before the due date or incomplete proposals were not to be entertained and were to be filed. As per said instructions dated 26.05.2017 (Annexure P/1), for creation of a new Gram Panchayat/ Gram Sabha, 1/3rd population of the village should have consented in favour of the new Panchayat and consent of Panches of the proposed Gram Panchayat was also to be shown. Respondent No.5 initiated the process for creation of new Panchayat without disclosing it to the existing members of the Panchayat. On 21.08.2017, a resolution (Annexure P/2) was shown to have been passed by respondent No.5 for creation of new Panchayat from the existing Panchayat of village Jitwal Kalan. As per the petitioners, no such meeting was called nor any notice of the said meeting was given to the petitioner. The resolution was passed at the back of the petitioners. Only four members of the Panchayat participated in the Panchayat meeting whereas the Panchayat consists of ten members. The resolution passed by the four members is not covered as per the provisions of Section 23 and 24 of the Act. As per Section 5 of the said Act, for holding any meeting of the Gram Panchayat, *at least* 1/5th members of the Gram Sabha should be present and the quorum should be complete but in the present case only about 200 persons were shown to be present at the time of meeting and

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there are 1206 members of the Gram Sabha. As such, the quorum was not complete. Respondent No.5 alongwith other Panches forged and fabricated signatures of members of the Gram Sabha. Kirpal Singh son of Bachan Singh had expired, but his signatures were on the alleged resolution. Some members of the Gram Sabha have given affidavits that their signatures were forged and fabricated. The said resolution was sent to respondent No.3, who in turn sent the same to D.D.P.O., Sangrur and the same was then forwarded without applying his mind.

3. As per the petitioners, when they came to know regarding passing of said resolution dated 21.08.2017 (Annexure P/2) and initiation of proceedings for creation of new Gram Panchayat without holding any meeting of the Panchayat, the resolution was challenged before the Director, Department of Rural Development and Panchayats, Punjab, respondent No.2, but respondent No.2 was not deciding the same. Thereafter, the petitioners filed CWP No.5029 of 2018 and the same was disposed of by this Court vide order dated 01.03.2018 (Annexure P/5). Thereafter, the matter came up for hearing before respondent No.2 on 09.03.2018 and vide order dated 09.03.2018 (Annexure P/6), respondent No.2 set aside the resolution dated 21.08.2017 (Annexure P/2). Even after setting aside of the resolution Annexure P/2, a proposal dated 14.09.2017 (Annexure P/4) was sent but respondent No.1 issued notification dated 14.03.2018 (Annexure P/7) for creation of new Panchayats wrongly and illegally without following the requirement of creation of new Panchayat and, as such, the present writ petition before this Court.

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4. In reply filed by respondents No. 4 and 5, plea was taken that *abadi* of village Jitwal Kalan Industry, which is part and parcel of Gram Panchayat, is situated at a distance of 1.5 Kms and is inhabited by over 1000 people. Residents of the said village, before holding of election, had moved an application dated 10.07.2017 for creation of new Panchayat to respondent No.5. The said application was considered by Gram Panchayat in its Gram Sabha meeting on 21.08.2017 and none of the residents of the village including village Gram Panchayat raised any objection for having new Gram Panchayat of village Jitwal Kalan and as such, the application was forwarded to respondent No.3, who had forwarded the same to respondent No.2. The proposal was thoroughly examined and scrutinized by respondent No.2 and thereafter notification dated 14.03.2018 (Annexure P/7) was passed and the grounds taken in the writ petition are without any basis and the same are because of party faction in the village, which is not in the interest of residents of the village and prayed that the writ petition be dismissed.

5. Similar reply was filed by respondents No. 6 and 8.

6. In their separate reply filed by respondents No. 1 to 3, i.e., State of Punjab and other official respondents, plea was taken that more than 230 residents of village Jitwal Kalan submitted an application before respondent No. 3 for establishing new Gram Panchayat of village Jitwal Kalan by segregating the existing Gram Panchayat, Jitwal Kalan. The Sarpanch and three Panches of Gram Panchayat, Jitwal Kalan agreed for establishing of new Gram Panchayat as the distance was more than 1.5

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Kms. Resolution was passed by Gram Sabha on 21.8.2017 under the chairmanship of Gurmel Kaur, Sarpanch and at that time, more than 250 residents of village Jitwal Kalan were present. The legal requirements for establishing of new Gram Panchayat were fulfilled and after considering the proposal recommended by respondent No.3, the Deputy Commissioner, Sangrur sent the recommendations for establishing new Gram Panchayat and respondent No.2 approved the new Gram Panchayat, Jitwal Kalan on 12.1.2018 and the notification dated 14.03.2018 (Annexure P/7) was issued.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that as per letter issued by State of Punjab in May, 2017, the proposal for creation of new Gram Panchayat/Gram Sabha was to be submitted upto 31.08.2017. The necessary requirement was that 1/3 population of the village should have consented in favour of creation of new Panchayat and consent of Panches of the Gram Panchayat was also to be obtained.

8. The main point involved in this writ petition is that respondents are asserting their claim that the notification dated 14.3.2018 (Annexure P/7) was issued on the basis of resolution dated 21.08.2017 having been passed by the Gram Sabha. The said resolution has been challenged by the petitioners on the ground that firstly, out of 10 members of Gram Panchayat, only four members had passed the resolution and the required quorum was not complete when the meeting of Gram Sabha was

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convened. For ready reference, Sections 23 and 24 of the Act which deal with Meeting of Gram Panchayat and Quorums and Procedure, are extracted below :-

“23. Meeting of Gram Panchayat. (1) The meeting of the Gram Panchayat shall be public and shall be held at least once a month at the office of the Gram Panchayat or at some other public place within the Gram Sabha area for which It is established and at such time and date as the Sarpanch may determine and notify.

(2) The Sarpanch, when required in writing by a majority of the Panches to call a special meeting, shall do so within three days failing which these Panches, shall, with the previous approval of the prescribed authority, be entitled to call a meeting after giving a week's notice through the Panchayat Secretary to the Sarpanch and the other Panches.

(3) Seven clear days notice of an ordinary meeting and three days clear notice of a special meeting specifying the place, date and time of such meeting and the business to be transacted thereat, shall be given by the Secretary to the Panches and such officers as the State Government may prescribe, and affixed on the notice board of the Gram Panchayats.

24. Quorums and Procedure. (1) The majority of Panches for the time being holding office shall form a quorum and if at the time appointed for the meeting, a quorum is not present -

(a) the presiding authority shall wait for thirty minutes, and if within such period there is no quorum, the presiding authority shall adjourn the meeting to such time on the following day or such future day as he may fix;

(b) similarly, the presiding authority after waiting for thirty

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minutes adjourn the meeting if, at any time, after it has begun attention is drawn to the want of a quorum and the business which could not be considered at the meeting postponed under clause (a) for want of quorum, shall be brought before and disposed of at the meeting so fixed or at any subsequent adjourned meeting at which there is a quorum.

(2) Save as otherwise provided by or under this Act, at every meeting of the Gram Panchayat, the Sarpanch and in his absence a Panch elected out of the Panches present shall preside for the occasion.

(3) All questions shall, unless otherwise specifically provided, be decided by a majority of votes of the present and voting and the Sarpanch or Panch presiding, as the case may be, unless he refrains from voting, shall give his vote before declaring the number of votes for and against a question and In the case of equality of votes, he may give his casting vote.

(4) No member of a Gram Panchayat shall vote on, or take part in the discussion of any question coming up for consideration at a meeting of a Gram Panchayat, if the question is one in which apart from its general application to the public, he has any pecuniary interest, and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.

(5) If the person presiding is believed by any member present at the meeting to have any such pecuniary interest in any matter under discussion, and if a motion to that be carried, he shall not preside at the meeting during such discussion or vote on or take part in it and in such a case any member other than that member of the Gram Panchayat may be chosen to preside at the meeting during the continuance of such discussion.”

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9. As there were 10 members of the Gram Panchayat and only 4 members were present, there was no consent of the Gram Panchayat for creation of new Gram Panchayat. More so, the quorum as required under Section 24 of the Act, was not complete at the time of passing of said resolution (Annexure P/2). The most important point is that the resolution dated 21.8.2017 (Annexure P/2) having been challenged before the competent authority, i.e. Director, Department of Rural Development and Panchayats, respondent No.2, had already set-aside the said resolution. The said order was passed even after intervention by this Court by way of directions issued in CWP-5029-2018. If the required resolution on the basis of which impugned notification, Annexure P/7 was issued and the same having been set-aside by respondent no.2 vide order dated 9.3.2018, Annexure P/6, the impugned notification could not have been issued. Thus, the notification, Annexure P/7 is illegal and has been issued erroneously by the respondent-State, the same is liable to be set-aside. So ordered.

10. Resultantly, the present writ petition is allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

August 23, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes