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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3900 of 2019**

Faguram Markam S/o Shri Roop Singh Markam, aged about 52 years, R/o Village - Dariganwan, P.S. & Block - Sahaspur Lohara, District Kabirdham (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through- The Secretary, Panchayat and Rural Development Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur (CG)
2. The Collector Kawardha, District Kabirdham (CG)
3. Sub-Divisional Officer Division Kawardha, Dist. Kabirdham (CG)
4. Chief Executive Officer Janpad Panchayat Sahaspur, Lohara, District Kabirdham, (CG)

---- Respondents**WPC No. 4016 of 2019**

Attamaram Patel, S/o Shri Narsingh Patel, aged about 35 years, R/o Village Tendubhata, Gram Panchayat Head Quarter Kestara Janpad Panchayat Saja Tahsil - Saja District - Bemetara (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through its Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Naya Raipur, District Raipur (CG)
2. The Collector District Bemetara (CG)
3. The Sub- Divisional Officer Revenue, Bemetara, District Bemetara (CG)
4. The Chief Executive Officer, Zila Panchayat Bemetara, District Bemetara (CG)
5. The Chief Executive Officer, Janpad Panchayat, Saja, District Bemetara (CG)

---- Respondents**WPC No. 4018 of 2019**

Mahesh Patel, S/o Shri Shivarat Patel, aged about 38 years, R/o

Village Tura Semariya, Gram Panchayat Head Quarter Hardas
Janpad Panchayat Saja Tahsil Saja District Bemetara (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Naya Raipur, District Raipur (CG)
2. The Collector District Bemetara (CG)
3. The Sub- Divisional Officer Revenue, Bemetara, District Bemetara (CG)
4. The Chief Executive Officer, Zila Panchayat Bemetara, District Bemetara (CG)
5. The Chief Executive Officer, Janpad Panchayat, Saja, District Bemetara (CG)

---- Respondents

WPC No.3900/2019

For Petitioner	:	Shri Ajit Singh & Shri KS Pradhan Advocates
For Respondent No.1 to 3	:	Shri SC Verma, Advocate General with Shri C.Shrivastava, Dy. Adv. General & Mr. G. Patel, Government Advocate.
For Respondent No.4	:	Shri Vikram Sharma, Advocate.

WPC No.4016/2019 & 4018/2019

For Petitioners	:	Shri Jitendra Nande & Shri D.N. Nande, Advocates
For Respondent No.1 to 3	:	Shri SC Verma, Advocate General with Shri C.Shrivastava, Dy. Adv. General, Shri G. Patel, Govt. Advocate
For Respondent No.5	:	Shri Vikram Sharma, Advocate.

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu**

Order On Board

Per P.R. Ramachandra Menon, CJ;

05/12/2019

1. Since common issue is involved in the above three writ petitions,
they are considered and decided by this common judgment.

2. WPC No.3900/2019 is treated as the '**lead case**' and reference is made to the parties and proceedings as given in the said case, except where it is separately mentioned with reference to the context.
3. The petitioner has moved this Court seeking to set aside Annexure P-1 Notification dated 16.10.2019, whereby some alterations have been effected with regard to two or more villages of the District Kabirdham (Kawardha), deviating from the draft Notification already published, which, according to the petitioner, is detrimental to his rights and interest.
4. Main ground of challenge raised is that, the impugned Notification is not in conformity with the relevant provisions of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (henceforth 'the Adhiniyam, 1993') and further that, no opportunity of hearing was given, when the proposal in the draft Notification was decided to be changed.
5. Learned counsel for the petitioners in WPC No.4016 & 4018 of 2019 submits that both the Notifications (draft and final) are put to challenge. The contention is that the objection preferred in response to the draft notification has not been properly considered and no proper opportunity of hearing was given.
6. We heard learned counsel for all the petitioners as well as the learned Advocate General for the State, assisted by Shri Chandresh Shrivastava, Dy. Advocate General, Shri Ghanshyam Patel, Government Advocate and Shri Vikram Sharma, Advocate.

7. It is the case of the petitioner that, on finding the need and necessity to notify 'villages' in conformity with the provisions of Section 129-B of the Adhiniyam, 1993, the 2nd respondent had issued draft Notification dated 5.10.2019 (Annexure P-3) in respect of the areas coming within the District Kabirdham (Kawardha). The grievance projected herein is with specific reference to the entries at Sl. No.59 & 60 of the draft Notification dated 5.10.2019. Admittedly, the petitioner did not submit any objection, as he was not aggrieved in any manner with regard to the proposal in the draft Notification. Later, when it came to be finalized by issuing Annexure P-1 Notification dated 16.10.2019, substantial changes are stated as effected with regard to the constitution of the Gram Panchayats, by name 'Darigawan' & 'Daniyakhurd', which is allegedly in contravention of the mandatory provisions of Sections 125 & 129-B of the Adhiniyam, 1993 and hence the challenge.
8. On 1.12.2019 a reply was filed on behalf of the 4th respondent seeking to justify the course and proceedings. On the same day, return was filed on behalf of the respondent No.1 to 3-State as well, referring to the scope of the relevant provisions of law, also placing reliance on the ruling rendered by the Apex Court in the matter of **Sundarjas Kanyalal Bhathija v. Collector, Thane** reported in **(1998) 3 SCC 396** and the decision rendered by a Division Bench of High Court of Madhya Pradesh at Jabalpur in the matter of **Rajdhar Singh Vs. State of MP & anr** reported in **1995 MPLJ 152**. It is pointed out that after publication of the

'preliminary notification', several objections were received and all of them were considered, including the suggestions made in this regard. It was only after that, the proceeding was finalized as per Annexure P-1 Notification dated 16.10.2019.

9. The version of the respondents is that, by virtue of the noted difference in the total population, appropriate arrangements had to be made to specify the 'villages', taking the optimum strength as 'one thousand' and making appropriate adjustments, depending on the various circumstances including boundaries, lie & nature and various other aspects. Copies of the objections/suggestions received have been collectively produced as Annexure R-1. Factual position has been sought to be explained with reference to the different villages wherever a change had to be effected, adding that when the constitution of one village is to be changed, it has a cascading effect in the nearby villages as well, in turn, leading to appropriate modifications to the requisite extent.

10. The petitioner has filed rejoinder on 3.12.2019, producing a copy of the Chhattisgarh Panchayat (Alteration of Limits, Disestablishment or Change of Headquarters) Rules, 1994 (for short 'the Rules of 1994'), particularly containing Rule 3, as Annexure P-6. According to the petitioner, 'Gazette notification' was necessary in terms of the Rule 3 of the Rules of 1994 and admittedly, since no such 'Gazette notification' has been issued, the entire proceedings are *per se* wrong and illegal. Reliance is sought to be placed on the judgment passed by a learned Single

Judge of this Court on 28.11.2019 in WPC No.3855/19 and other connected cases.

11. The factual position narrated by the respondents in their pleadings/returns, as mentioned above, necessitating changes with regard to the 'constitution of villages' has not been successfully rebutted by the petitioner in the rejoinder. However, it is contended that, the proceedings finalized by the respondents are bad, insofar as there was no Gazette notification in terms of the Rule 3 of the Rules of 1994.
12. When the matter came up for consideration before this Court on 4.12.2019, it was brought to the notice of this Court that Annexure P-1 Notification was issued by the 2nd respondent District Collector in exercise of the powers conferred vide Notification No.बी-1-11-95-बाईस-पं.-2-भाग चार दिनांक dated 23.2.1999 [by the Governor] and hence the said proceeding is perfectly valid in the eye of law. It was also stated from the part of the respondents that such a Notification of the District Collector does not require to be published in the 'Official Gazette', adding that the provision of law sought to be relied on by the petitioner is not attracted.
13. Learned Counsel for the petitioner submitted that the basic provision is Section 125 of the Adhiniyam, 1993, proviso to which points to the necessity to have the publication effected 'as prescribed'. Since the Rules of 1994 have been framed by the State in exercise of the powers under the Statute, as above, and

insofar as Rule 3 of the Rules of 1994 clearly mentions that the publication in the Official Gazette is necessary, it is to be held mandatory and the lapse in this regard would vitiate all further proceedings. It is in the said context that, the verdict passed by the learned Single Judge in WPC No.3855/19 & connected cases, is sought to be relied on.

14. With regard to the alleged mandatory requirement to have the Notification published in the Official Gazette, the version of the State is that the publication in the Gazette is not a mandatory requirement, as made clear by a learned Single Judge of this Court in the matter of **Gramvasi Gram Khari Gram Panchayat, Dhamni Vs. The Collector, Balodabazar** reported in **AIR 2015 CG 7**, where it has been held that it is only 'directory' and that the substantial compliance by effecting the publication by virtue of other modes mentioned in the Rule 3 of the Rules of 1994 would satisfy the requirement. It is also pointed out that the said judgment has been approved by a Division Bench of this Court in WA No.194/2017.
15. But, during the course of hearing, this Court noted that there was some difference in the 'terminology' used in Sections 125, 126, 127 & 129-B of the Adhiniyam, 1993. Sections 125 & 126 of the Adhiniyam, 1993 referring to the 'Notification' to be issued by the Governor or the person authorized by him. Section 129B stipulates that the 'notification' shall be issued by the Governor, which made this Court to raise a query as to whether any 'delegation of power' could have been ordered by the Governor,

as per the Notification dated 23.2.1999, when the power to delegate was absent in the above provision. When the proviso to Section 125 of the Adhiniyam, 1993 states that publication has to be effected 'as prescribed' and since the words 'as prescribed' means, as prescribed by the Rules and further since the Rule 3 of the Rules of 1994 framed in this regard clearly mandated publication in the 'Official Gazette', how could it be reconciled, was the further question put by this Court. It was accordingly, that an observation was made by this Court on 3.12.2019 in the following terms:-

“Annexure-P/1 Final Notification dated 16.10.2019 (involving Sl. Nos. 59 and 60) altering the limits of two villages by name village 'Biranpurkhurd' and 'Khapri' deviating from Annexure P/3 Draft Notification is subjected to challenge. Main ground is that no opportunity of hearing was given to the Petitioners who had no grievance in respect of Annexure P/3 Draft Notification, but came to be aggrieved only because of the change brought about. There is also a case that Annexure-P/1 Notification has not been published in the Gazette; which is stated as in violation of Rule 3(1)(ii) of the Chhattisgarh Panchayat (Alteration of Limits, Dis-establishment or Change of Headquarter), Rules, 1994 (for short, 'the Rules, 1994'). The version of the Respondents is that there is no violation of any Rules and the circumstances under which the change has been necessitated has been explained with reference to the population, based on the suggestions/ objections received pursuant to Annexure-P/3 Preliminary Notification. It is asserted that no opportunity of

hearing is intended as per statute and power vested upon the Governor or the authority to whom the power is delegated in this regard is 'legislative' in nature; which does not envisage compliance of any principle of natural justice as made clear by the Apex Court in *State of Punjab v. Tehal Singh and Others* (2002) 2 SCC 7. It is further pointed out that the common judgment dated 28.11.2019 passed by a learned Judge of this Court in WPC No. 3855 of 2019 sought to be relied on by the Petitioners is not correct; insofar as the law declared by the Supreme Court was not brought to the notice of the learned Single Judge and hence steps are being pursued to cause the same to be reviewed. It is further pointed out that the legal position has been made clear by another learned Single Judge of this Court in *Gramvasi Gram Khari Gram Panchayat, Dhamni v. The Collector, Baloda Bazar* reported in AIR 2015 CG 7 (paragraphs 15 to 18) and said judgment has been 'upheld' by a Division Bench of this Court in Writ Appeal No. 194 of 2017. It is also brought to the notice of this Court that the Collector / Issuing Authority, who issued Annexures-P/3 and P/1 Notifications is having the power to have issued the same by virtue of the delegation of powers made by the Governor as per the 'Rules of Business' and a copy of the Notification bearing No. बी-1-11-95-बाईस-पं.-2-भाग चार दिनांक 23 फरवरी, 1999 is made available. During the course of hearing, though we are prima facie satisfied with the version of the Government with regard to the factual aspects/circumstances leading to Annexure P/1 Notification, two legal aspects require to be considered in detail. Admittedly, no Election Notification has been issued so far. Annexures-P/3 and P/1 are only Notifications issued by the Collector

which have not been published in the Gazette. Since the basic provision i.e. proviso to Section 125(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short, 'the Act, 1993') stipulates that no order shall be passed unless it is published inviting suggestions and objections in such manner as may be prescribed, what is 'prescribed' is the question ? 'As prescribed' means 'as prescribed by Rules. The relevant Rules framed in exercise of power under Section 125 of the Act, 1993 are the Rules, 1994 of which Rule 3(1)(ii) specifically says that it shall be by publication in the Official Gazette and by affixing a copy of such notification on the notice board of the Gram Panchayat's concerned and on one or two conspicuous places in the area affected by such intention. It is conjunctive and not alternative by virtue of which all the three requirements have to be satisfied. It is settled law that when the law stipulates an act has to be done in a particular manner, it can be done only in that manner and not in any other manner. {see the judgment passed by the Apex Court in J & K Housing Board and another v. Kunwar Sanjay Krishan Kaul and others (2011) 10 SCC 714} . Since no Gazette publication has been effected, what is the consequence, is the next question ? Another important aspect noted is that, there is some difference in terminology used among the different provisions of the Act, 1993 i.e. Section 125, 126, 127 and 129-B. When Sections 125 and 126 confer the power upon the Governor or the authority authorized by him, the terminology used in Section 127 of the Act, 1993 is that 'the Governor may, by notification change the headquarters of a Block or alter the limits of a Block by including therein any local area in the vicinity thereof or by excluding therefrom any local

area comprised therein'. Coming to Section 129-B of the Act, 1993 as to the Constitution of Village and Gram Sabha, sub-section (1) clearly says that 'the Governor shall' by public notification specify a "Village" for the purposes of Chapter' XIV-A dealing with "Special Provisions for Panchayats in the Scheduled Area". In other words, while Sections 125 and 126 of the Act, 1993 authorize the Governor to delegate the power, Section 129B apparently does not give any such power to delegate. If there is no such power to delegate how can such power can be declared as delegated by the Governor by issuing Notification बी-1-11-95-बाईस-पं.-2-भाग चार दिनांक 23 फरवरी, 1999 is the question to be answered.

Similarly, the point raised by the Respondents to the effect that the verdict passed by the learned Single Judge in Gramvashi's case (supra) has been upheld by Division Bench does not appear to be fully correct, though a reference has been made to the said judgment in the verdict passed by the Division Bench in Writ Appeal No. 194 of 2017. As observed in the 'last paragraph' of the Bunch verdict, the reliance sought to be placed was with reference to another aspect which was considered and decided by the learned Single Judge and not with regard to the mandatory nature of the publication in the Official Gazette.

Yet another aspect is to be noted is with reference to the submission made on behalf of the the Respondents, that Article '243-O' of the Constitution is attracted and hence the matter cannot be examined by this Court. This Court is aware of a similar provision (Section 121) of the Act, 1993 as well. But the context and scope mentioned in both of the above

two provisions prima facie are not attracted to the given situation. It still remains a matter to be dealt with elaborately.

The learned Advocate General seeks for an opportunity to address this Court after having detailed deliberation with the authorities of the Government at higher levels and seeks to have a posting tomorrow i.e. on 05.12.2019.

The submission made by the learned Advocate General that no Election Notification would be issued till the matter is dealt with by this Court, is recorded.”

The matter was adjourned at the instance of the learned Advocate General to address the Court after getting necessary clarifications and instructions in the matter.

16. Today, the learned Advocate General made submissions to the effect that the circumstances under which the change has been sought to be effected are not properly rebutted by specific pleadings in the rejoinder and the factual data referred to, stand intact. As such, the course pursued by the respondents is a bonafide exercise and cannot be said to be tainted in any manner. It is also brought to the notice of this Court that the provisions contained, particularly as to the publication to be effected and the liberty to file objections, as envisaged under Section 125 of the Adhiniyam, 1993 and such other provisions, do not contemplate any 'opportunity of hearing'. It being purely a 'legislative function' and not an executive or administrative one, it is stated that the principles of natural justice are not applicable.

Reliance is sought to be placed on the verdicts passed by the Supreme Court in the matters of **State of Punjab v. Tehal Singh & ors** reported in **(2002) 2 SCC 7** & **Sundarjas Kanyalal Bhatija & ors Vs. Collector, Thane, Maharashtra & ors** reported in **(1989) 3 SCC 396**.

17. On going through the above provisions, this Court does not find any step as in the case of 'adjudication' by affording any opportunity of hearing. What the provision (Section 125 of the Adhiniyam, 1993) says is only to have a preliminary notification published, with opportunity to file objections/ suggestions and to have the same finalized after considering the same. The provision does not say that after getting the objections/suggestions, an opportunity of hearing has to be given to all the persons, who made objection/suggestion, before an order/notification is issued by the Governor. The law stands declared by the Apex Court, holding that it is only a 'legislative' function and therefore, the principles of natural justice are not attracted. As it stands so, the respondents are justified in saying that the idea and understanding of the petitioner to the contrary is not correct or sustainable. We answer the question against the petitioner and in favour of the respondent State in this regard.
18. As mentioned already, the circumstances under which the change was necessitated, deviating from the position mentioned in the draft Notification, have been explained. We expressed our *prima facie* satisfaction over the same when the matter was heard yesterday and we reiterate the same and hold that the

reason for effecting the change cannot be held as wrong, unsustainable or malafide in any manner. However, we do not intend to say anything with regard to the data inputs or figures mentioned therein.

19. Next question for consideration is whether the proceedings are bad for want of 'Gazette notification', as contended by the petitioner and also as to the power of the Governor to have authorized the District Collector to issue necessary notification (as per the Notification Dated 23.2.1999); more so, when any such power to delegate is not discernible from Section 129B of the Adhiniyam, 1993, unlike the situation covered by Sections 125 & 126 of the Adhiniyam, 1993.

20. The learned Advocate General submits that, unlike other authorities, the power of the Executive Head of the State i.e. Governor, is discernible from Articles 154, 163 & 166 of the Constitution of India. He submits that very wide powers have been conferred upon the Governor to frame the 'Rules of Business' and it was in exercise of such powers, that proper 'Rules of Business' have been framed by the Governor, a copy of which has been placed for perusal of this Court. Learned Advocate General sought to place reliance on the verdicts passed by the Apex Court in the matter of **State of UP & ors Vs. Pradhan Sangh Kshettra Samiti & ors** reported in **1995 Supp (2) SCC 305** & **Samsher Singh v. State of Punjab** reported in **(1974) 2 SCC 831**, in support of the submissions made with reference to the mandate of the Constitutional provisions, in

particular, Articles 154, 163 & 166 of the Constitution of India, contending that any act of the Executive is to be taken as act of the Governor.

21. It is pointed out by the learned Advocate General that Rule 2 of the Rules of Business says that the Governor may, at any time, by special order, direct or permit a departure from any of the said rules. Reference is made to Rule 10, which stipulates that every Minister and every Secretary in administrative charge of a department shall transmit to the Governor and to the Chief Minister, all such cases which are required to be submitted to the Governor and the Chief Minister by or under the rules. The Notification bearing No. बी-1-11-95-बाईस-पं.-2-भाग चार दिनांक 23 फरवरी, 1999 has been issued in this regard, which reads as follows;-

“अधिसूचना क्र. बी-1-11-95-बाईस-पं.-2-भाग चार दिनांक 23 फरवरी, 1999.- समन्वय के मामले के संबंध में कार्य नियम के नियम 10 के अधीन जारी किए गए निदेश के पैरा (1) के खण्ड (ख) (ख) (ख) में अंतर्विष्ट किसी बात के होते हुए भी, छत्तीसगढ़ के राज्यपाल, छत्तीसगढ़ कार्यपालक शासन के कार्य नियम के भाग-एक के नियम, 2 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, एतद्वारा, यह निदेश देते हैं कि छत्तीसगढ़ पंचायत राज अधिनियम, 1993 (क्रमांक 1 सन् 1994) की धारा 3, 125, 126 तथा 129-ख के अधीन मामले संबंधित राजस्व जिले के कलक्टर द्वारा निपटाए जायेंगे।”

22. Reference is also made to Cause (bbb) of the Part IV-Directions issued under Rule 10 of the Rules of Business, which is

reproduced below;-

“(bbb) Cases pertaining to specification of new village change of headquarters of Gram Panchayat, division, amalgamation and alteration of Gram Panchayats, dis-establishment of village and alteration in limits of block and Zila Panchayat under the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (No.1 of 1994).

23. It is pointed out that, it is in conformity with the above Rules and in particular Rule 2 regarding the deviation that could be made by the Governor by a special order, that such 'special order' was issued on 23.2.1999 conferring powers upon the District Collector to have issued the notification. This being the position, it is not a case of delegation of power, but an act pursued by the Governor himself, is the submission made by learned Advocate General. Accordingly, the District Collector issued the relevant Notification, which originally was Annexure P-3 'draft notification', followed by Annexure P-1 final Notification dated 16.10.2019, after considering the objections/suggestions in this regard. This being the position, the different limbs are connected together to form a chain and hence, the challenge raised by the petitioner fails, submits learned Advocate General. We find considerable force in the said submission.

24. With regard to the absence of 'Gazette publication', the learned Advocate General has raised 'two-folds contention'. It is stated that no Gazette notification is required as the same is not specifically stipulated under the relevant provisions of law. Even if it is necessary, insofar as the Annexure P-1 is concerned, the

stage is still to be reached as Annexure P-1 Notification is only in respect of the 'change of villages' and not with reference to 'alteration of the areas of the Gram Panchayat', as envisaged under Section 125 of the Adhiniyam, 1993.

25. Contention raised by the learned counsel for the petitioner is with reference to Section 125 of the Adhiniyam, 1993 and Rule 3 of the Rules of 1994 framed in this regard, which read as follows:-

“Section 125. Changes of headquarters of Gram Panchayat division, amalgamation and alteration of Panchayat area.- (1) The Governor or the authority authorized by him may by order change the headquarters of a Gram Panchayat or alter, the limits of a Gram Panchayat area by including within it any local area in the vicinity thereof or by excluding therefrom any local area comprised therein or amalgamate two or more Gram Panchayat areas and from one Gram Panchayat area in their place or split up a Gram Panchayat area and from two or more Gram Panchayat areas in its place.

Provided that no order under this section shall be made unless a proposal in this behalf is published for inviting suggestions and objections in such manner as may be prescribed and objections are considered.

(2) On the issuance of the order under sub-section (1) the Governor or the prescribed authority shall pass such consequential orders as may be necessary”

“Rule 3. Change of Headquarters of Gram Panchayat, amalgamation or alteration of Gram Panchayat area- (1) Where the Governor or the authority authorized by him desires under sub-section (1) of Section 125,-

- (i) to change the headquarters of a Gram

Panchayat; or

(ii) to alter the limits of a Gram Panchayat by including within it any local area in the vicinity thereof by excluding therefrom any local area comprised therein; or

(iii) to amalgamate two or more Gram Panchayat areas and form one Gram Panchayat area in their place; or

(iv) to split up a Gram Panchayat area and form two or more Gram Panchayat areas in its place.

he/it shall declare his/its intention in the form of a proposal to do so by publishing a notification in the "Chhattisgarh Gazette" and by affixing a copy of such notification on the notice board of the Gram Panchayat's concerned and on one or two conspicuous places in the area affected by such intention.

(2) Every such notification shall specify,-

(i) in case of clause (i) of sub-rule (1), the existing headquarters of a Gram Panchayat and proposed headquarters;

(ii) in case of clause (ii) of sub-rule (i), the Khasra numbers of the area proposed to be included in a Gram Panchayat or proposed to be excluded therefrom;

(iii) in case of clause (iii) of sub-rule (i), the Gram Panchayats proposed to be amalgamated; and

(iv) in case of clause (iv) of sub-rule (i), the particulars of each of the area proposed to be split up.

(3) Every such notification shall invite suggestions and objections by the date to be mentioned therein and any objection or suggestion received from any person with

respect to the proposal before the expiry of the date specified above shall be considered by the Governor or the authority authorized by him, as the case may be.”

26. Section 125 of the Adhiniyam, 1993 points out the necessity to issue publication inviting objections and suggestions, making it clear that no order shall be passed thereunder, unless the persons concerned are given opportunity to file objections/suggestions, 'as prescribed'. As mentioned already, the term 'as prescribed' means as prescribed by the Rules. There is no dispute that the Rules have already been framed in this regard (the Rules of 1994). Rule 3 (1) (2) of the Rules of 1994 is one of the instances which is stated as applicable to the case in hand, as pointed by the petitioner. This Rule clearly says that publication shall be effected in the 'Official Gazette' and by affixing a copy of such notification on the notice board of the Gram Panchayat concerned and on one or two conspicuous places in the area affected. Three modes of publication are insisted and the conjunction used is “**and**”. When the Statute says that the publication shall be effected in the 'Official Gazette', it has to be effected in that manner. This being the position, it is not correct to say that the notification in the Official Gazette is not necessary in respect of the situation covered by Section 125 of the Adhiniyam, 1993. But then, the question is whether it is attracted to the case in hand, insofar as the Annexure P-1 Notification is concerned?

27. Obviously, Annexure P-1 Notification has been issued with specific reference to Section 129-B of the Adhiniyam, 1993 with

regard to constitution of 'Village' and 'Gram Sabha' coming under Chapter XIV-A dealing with the **Special Provisions For Panchayats in the 'Scheduled Areas'**. Section 129-B reads as follows;-

“129-B. Constitution of Village and Gram Sabha.- (1)

The Governor shall by public notification specify a “Village” for the purposes of this Chapter.

(2) Ordinarily, there shall be a Gram Sabha for a 'village' as defined in sub-section (1);

Provided that if the member of the Gram Sabha so desired, more than one Gram Sabha may be constituted in a village, in such manner as may be prescribed, and each such Gram Sabha may consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.

(3) Not less than one-third of total number of members of the “Gram Sabha” shall form a quorum for meeting of the Gram Sabha, out of which not less than one-third shall be women members.

(4) The meeting of 'Gram Sabha' shall be presided over by a member of Gram Sabha belonging to the Scheduled Tribes not being the Sarpanch or the Upsarpanch or any member of the Panchayat, to be elected for the purpose of the majority of the members present in that meeting.”

28. Section 129-B (1) is almost similar to the general provision under Section 3 of the Adhiniyam, 1993, which deals with the **'Non-Scheduled areas'**, and the same is also reproduced below;-

“3.Notification of village.- The Governor shall by public notification specify a village or group of

villages to be a village for the purpose of this Act.”

Learned Advocate General points out that Annexure P-1 Notification itself is quite categorical and it is borne by the first paragraph itself. The situation dealt with in the second paragraph, as to the constitution of 'Gram Sabha', is only incidental, which is still to happen as clearly discernible from the terminology used. For convenience of reference, we find it appropriate to extract the above two paragraphs of Annexure P-1 Notification as well, to be part of this verdict;-

“छत्तीसगढ़ शासन, पंचायत एवं ग्रामीण विकास विभाग की अधिसूचना क्रमांक एफ-1-11-95-22 पं. 02 दिनांक 23 फरवरी 1999 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, छत्तीसगढ़ पंचायत राज अधिनियम 1993 (क्रमांक 1 सन् 1994) (जिले इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 03/धारा 129 ख (1) के प्रावधानों के अधीन राजस्व जिला कबीरधाम के कलेक्टर द्वारा संलग्न सारणी (जिसे, इसके पश्चात् “सारणी” कहा गया है) के स्तंभ (4) के दर्शाये गये गाँव या गाँवों के समूह के लिए जिसकी जनसंख्या सारणी के स्तंभ (5) में दर्शायी गई हैं, सारणी के स्तंभ (3) में उल्लेखित नाम से उक्त अधिनियम के प्रयोजनों के लिए “ग्राम के में विनिर्दिष्ट किया जाता है, तथा सार्वजनिक जानकारी के लिए एतद् द्वारा प्रकाशित किया जाता है।”

“इस स्थापित ग्राम में अधिनियम की धारा 8 (क) के अनुसार ग्राम पंचायत का गठन किया जायेगा। इस प्रकार गठित ग्राम पंचायतों को अधिनियम की धारा 11 के अंतर्गत वर्णित अधिनियम के प्रयोजन के लिये आवश्यक अन्य समस्त शक्तियाँ प्राप्त होती है।”

29. It is pointed out by the learned Advocate General that the action pursued by the 2nd respondent/District Collector in exercise of powers conferred upon him by the Governor, as mentioned already, is with regard to the 'constitution of village' and not with regard to the 'change of headquarters of Gram Panchayat, division, amalgamation or alteration of Gram Panchayat areas',

which is the next step to follow, if and when required/ necessitated. It is further stated that, if it has to follow, it will be pursued by issuing a 'Gazette notification', which is still possible and the time is still to come; by virtue of which, the case projected by the petitioner is rather premature.

30. After hearing both the sides and after going through the relevant provisions, the publication with regard to the instance covered by Section 125 of the Adhiniyam, 1993 has necessarily to be effected in terms of Rule 3 of the Rules of 1994 i.e. by way of 'Gazette notification', and as such, the submission made by the respondent State that no 'Gazette notification' is required, stands repelled. But, we accept the submission made by the learned Advocate General that such a situation is still to arise and Annexure P-1 Notification, being one issued with reference to Section 129B of the Adhiniyam, 1993, cannot come within the purview of the same. We answer the said point in favour of the respondent/ State.

31. The learned Advocate General submits that the Rules of 1994 are only with reference to Sections 125 & 126 of the Adhiniyam, 1993 and not with reference to Section 129-B of the Adhiniyam, 1993. However, it has to be noted that Section 129B mandates issuance of a public notification. What is a 'public notification' and could it be said that the public notification always envisages issuance of notification in the Official Gazette as defined under Section 2 (39) of the General Clause Act, is a question. No enabling material or provision is brought to the notice of this

Court either by way of any legal provisions or by any precedent, to hold that it always amounts to a notification in the Official Gazette. More so, wherever the notification is to be issued in Official Gazette, it has been stipulated separately. That apart, the learned Advocate General points out that Annexure P-1 Notification issued on 16.10.2019, has already been published in the Official Gazette on 30.10.2019.

32. It will only be relevant to note is whether any prejudice has been caused to the petitioner by the alleged non-publication of the notification in the Official Gazette. It could be said that absence of Gazette notification, would have disabled a party to put forth objections/suggestions stating that he had not come across the contents. But, in the instant case, the petitioner has admittedly come across the Annexure P-3 draft notification and since he was not aggrieved of the contents, he did not submit any objection. Subsequently, the petitioner came across Annexure P-1 dated 16.10.2019 as well; which was in deviation from Annexure P-3, and hence the petitioner approached this Court challenging the same. So, non-publication, in the Official Gazette has not caused any prejudice to the petitioner in any manner.
33. Another important aspect to be looked into is that the purpose of the notification envisaged under Section 129-B of the Adhiniyam, 1993 apparently differs from the purpose of notification contemplated under Section 125 of the Adhiniyam, 1993. Section 125 Notification is with an intent to give opportunity to all concerned to submit their objections/suggestions and the

proceedings can be finalized and notified only after considering the said objections/suggestions. But, Section 129-B of the Adhiniyam, 1993 does not say of any necessity to issue a preliminary/draft notification inviting objections/suggestions and no such right is created upon anybody, nor is there any requirement to consider such objections/suggestions and to have it finalized thereafter, insofar as the 'villages' are concerned. If no objections/ suggestions are to be invited/called for and if no right is conferred on anybody to submit any such objections/suggestions in respect of any instance covered by Section 129-B, the purpose of notification therein is only to make the general public aware as to the course pursued by the Governor / District Collector, as the case may be. In other words, such a notification issued has to be taken as it is and the alleged non-publication in the Official Gazette does not make the proceedings vitiated in any manner.

34. It is also relevant to note that, though Section 129B of the Adhiniyam, 1993 does not stipulate issuance of any preliminary notification inviting objections/suggestions, going by the impugned notification produced before this Court, it is seen that such a course was pursued by the respondents even in respect of Section 129-B (unlike Section 125) dealing with the 'Villages'. It was after considering the objections/suggestions that the proceedings were finalized. Though this is not a mandatory requirement, it was to make the proceeding more transparent in all respects and as such, it cannot be taken as a tool or ground to

strike against the respondents.

35. In the above circumstances, we hold that the challenge raised against the Notification dated 16.10.2019 issued by the 2nd respondent/Collector, as impugned in these writ petitions, is not liable to be entertained. Interference is declined and writ petitions are dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-