

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 4685 of 2019**

Sunit Kishore Toppo S/o Late Thepa Ram, Aged About 42 Years, R/o Village - Jamuniya, Tahsil And Police Station - Rajpur, District - Balrampur – Ramanujganj, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Mantralaya, New Raipur Chhattisgarh
2. The Collector, District - Balrampur – Ramanujganj, Chhattisgarh
3. The Sub - Divisional Officer (Revenue), Rajpur, District - Balrampur – Ramanujganj, Chhattisgarh
4. The Chief Executive Officer, Janpad Panchayat, Rajpur, District - Balrampur - Ramanujganj Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sajeew Kumar Sahu, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06.01.2020**

1. The challenge in the present writ petition is to the notification dated 21.10.2019 passed under Section 129 B (1) of the Panchayat Raj Adhiniyam, 1993.
2. It appears that the petitioner is more aggrieved of the amalgamation of

village Jamuniya with a newly created Gram Panchayat Udhvakathra. According to the petitioner, his village was earlier a dependent village of Gram Panchayat Chilmakala but subsequently, the respondents vide impugned notification have created a new Gram Panchayat in the name of Udhvakathra and village Jamuniya to which the petitioner belongs has been made a dependent village of Gram Panchayat Udhvakathra.

3. State counsel was directed to seek instruction and on instruction, he submits that initially a preliminary notification was issued in this regard on 05.10.2019 whereby the village to which the petitioner belongs i.e. village Jamuniya was shown to be the dependent village of Gram Panchayat Chilmakala which itself had a population of more than 1000. It is submitted that the villagers of Udhvakathra had submitted an objection to the notification dated 05.10.2019 with a prayer that they be declared as an independent Gram Panchayat considering the practical difficulties that the villagers face in going to the Gram Panchayat headquarter at Chilmakala which according to the villagers of Udhvakathra is more than 8 km away. State counsel submits that taking into consideration such objections by the villagers it was finally vide notification dated 16.10.2019 decided to make Udhvakathra a Gram Panchayat and village Jamuniya a dependant village. State counsel referring to the documents submits that Udhvakathra and Jamuniya are adjoining villages and it is only 2 ½ km for the people of village Jamuniya to reach Udhvakathra whereas earlier people from Jamuniya was required to travel more than 6 kms to reach Gram Panchayat headquarter. Moreover, the contention of the State counsel

is that the notification is in fact legislative in nature and there is hardly any scope of interference left for this Court to interfere in such a matter.

4. If we take into consideration the notifications published by the respondents, it would clearly reflect that the population of Gram Panchayat Chilmakala was more than 1000 whereas even after amalgamation of village Jamuniya with Gram Panchayat Udhvakathra the population of the two villages is only around 477. This could have been one of the factors for the State authorities for amalgamating village Jamuniya with Gram Panchayat Udhvakathra.
5. So far as the scope of interference by the High Court under such circumstances is concerned, the matter already stands adjudicated upon by a decision rendered by this High Court in the case of **Gramvasi Gram Khari Gram Panchayat Dhamni & another Vs. The Collector, Baloda Bazar** in WPC No. 1996/2014 and bunch of other connected writ petitions decided vide order dated 24.11.2014. This High Court, while deciding the issue of the nature of power exercised by the Collector and the High Court's power of review in the matters of legislative in nature, had in paragraphs 24 to 30 held as under:-

“24. The other ground of challenge is based on convenience of the villagers because of change of Headquarter or on the basis of violation of guidelines.

25. On a perusal of the communications issued by the State Government on 22-5-2014 & 27-5-2014, it would manifest that such communication does not have any statutory backing. It only lays down the broad parameters which are required to be considered for making the proposals and for finalization thereof, therefore, violation of the guidelines

does not have the effect of violation of any mandatory provision of the Adhiniyam or the Rules, 1994, resultantly, any such violation, if any, would not invalidate the final notification.

26. In *Sundarajas Kanyalal Bhathija v. The Collector⁶, Thane, Maharashtra* it has been held that the exercise of delimitation of Municipal area is legislative function, therefore, the right of hearing or principles of natural justice are not applicable. Similar proposition has been laid down by the Supreme Court in *The Talsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur⁷*. This principle has been reiterated by the Supreme Court in *M.R.F. Ltd. v. Inspector Kerala Govt.⁸ and State of Punjab v. Tehal Singh⁹*.

27. in *Tehal Singh* (supra) the following has been held:-

“7. The principles of law that emerge from the aforesaid decisions are : (1) where provisions of a statute provide for the legislative activity i.e. making of a legislative instruments or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into action forthwith provide for certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to particular situation; (3) lay down future course of actions, the same is generally held to be legislative in character.

6 AIR 1990 SC 261

7 AIR 1980 SC 882

8 (1998) 8 SCC 227

9 (2002) 2 SCC 7

8.....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.....”

28. While dealing with challenge of similar exercise undertaken by the State of Chhattisgarh in the year 2004, this Court in *Ganesh Ram Koshare v. State of C.G.*¹⁰ rejected the similar grounds of challenge by holding that the exercise of amalgamation/alteration/change of headquarter of Gram Panchayat is legislative in character, therefore, principles of natural justice are not attracted.

High Court's power of review in matters, legislative in nature:

29. In *Rajdhar Singh v. State of M.P.*¹¹ the Division Bench of the Madhya Pradesh High Court held thus:

“Notification having been issued in exercise of powers which are legislative in character interference by High Court is impermissible. The decision of the Authorities in constituting a Gram Panchayat by name of M was perfectly in accordance with law. It was a decision over which the High Court would not sit as a court of appeal and would not substitute its own views.”

1 0 2004 (2) CGLJ 327

1 1 1995 MPLJ 152

30. The Supreme Court in *Jammu and Kashmir National Panthers Party v. Union of India*¹² while dealing with challenge to delimitation of Assembly Constituencies on the ground of growing imbalance in composition of constituencies, not reflecting proper representation of people of the State, relied on its earlier decision rendered in *R.C. Poudyal v. Union of India*¹³ and held thus:

17. This Court in *Poudyal case* relied on the opinion of Earl Warren, C.J. in *B.A. Reynolds*. At L Ed p. 536 of the Report the learned Chief Justice held as follows:

“... We realise that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement.”

The learned Chief Justice also relied on historical factors in support of his opinion and held: (L Ed p. 537)

“History indicates, however, that many States have deviated, to a greater or lesser degree, for the equal-population principle in the apportionment of seats in at least one house of their legislatures. So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational State policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of bicameral State Legislature ”

6. In view of the aforesaid legal position as it stands and taking into consideration the objections that the petitioner has raised in the present writ petition, particularly taking note of the distance from the dependent

1 2 (2011) 1 SCC 228

1 3 1994 Supp (1) SCC 324

village to the Gram Panchayat Head Quarter, this Court is of the opinion that there is hardly any scope of interference left for this Court in exercise of its power under Article 226 of the Constitution of India.

7. The writ petition thus fails and is accordingly rejected.

**Sd/-
P. Sam Koshy
Judge**