

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPC No. 4784 of 2019**

1. Santoshi Bai, W/o Dev Prakash, Aged About 35 Years, R/o Gram Ghota, Panchayat-Khandsra, Tehsil Bodla, District: Kawardha (Kabirdham), Chhattisgarh

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through Its Secretary Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District : Raipur, Chhattisgarh
2. Collector, District : Kawardha (Kabirdham), Chhattisgarh
3. Chief Executive Officer, Zila Panchayat Kabirdham, District : Kawardha (Kabirdham), Chhattisgarh
4. Sub Divisional Officer (Revenue), Block-Bodla, District : Kawardha (Kabirdham), Chhattisgarh
5. Chief Executive Officer, Janpad Panchayat Bodla, District : Kawardha (Kabirdham), Chhattisgarh

**---- Respondents**

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| For Petitioner | : | Mr. Faisal Akhtar, Advocate         |
| For State      | : | Mr. Jitendra Pali, Dy. Adv. General |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**06.01.2020**

1. The grievance of the petitioner seems to be the final notification dated 16.10.2019; whereby the Collector, District: Kabirdham has issued a notification under Section 3 r/w sec. 129-B of the Panchayat Raj Adhiniyam, 1993.
2. The grievance of the petitioner is that, the petitioner is a resident of village-Ghota, which was earlier dependent village of Gram

Panchayat-Khandsra. However, vide the preliminary notification dated 05.10.2019 and the final notification dated 16.10.2019, village-Ghota has been shown to be amalgamated with Gram Panchayat Mohli.

3. The ground for challenge by the petitioner is primarily the distance between the two gram panchayat headquarters. According to the counsel for the petitioner, earlier the distance between the two gram panchayats headquarter, that of Gram Panchayat- Khandsra and Gram Panchayat-Ghota was of Kms, whereas the headquarter of the present gram panchayat ie., Mohli is about 4 Kms and thus, it causes inconvenience for the villagers of village-Ghota.
4. The second objection of the counsel for the petitioner is that the petitioner had raised the objection on 10.10.2019 but the respondents have not considered the said objection and without considering the objection, have passed the final notification.
5. A plain perusal of the record would show that the Gram Panchayat Khandsra has population of more than 1700 and, therefore, it is presumed that taking into consideration the population, the authorities must have removed the village-Ghota from being a dependent village and amalgamated it with Gram Panchayat- Mohli which has a lesser population of 700 and the population of village Ghota is 336, which added altogether comes to only 1000 and there is another village-Sirmi, which is also amalgamated of which population is 327 persons which added the population of Gram Panchayat-Mahli is 1375.

6. Perusal of the record would show that the concerned authorities do have the powers for amalgamation of the Gram Panchayats. It is not a case of the petitioner that the respondents do not have the power of the same. The State Governments have had framed guidelines on the basis of which the action had to be finalized. It is Annexure P-2 dated 11.09.2019, it appears that the respondents have taken into consideration these guidelines while finalising the limits of the gram panchayats.
7. It would be relevant at this juncture to refer to the judgment rendered in **W.P. (C ) No. 1996 of 2014 in the case of Gramvasi Gram Khari Gram Panchayat Dhamni and Anr. Vs. Collector and others** in paragraph No. 24 to 30 had 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 Collector, Thane, Maharashtra*<sup>6</sup> 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, Tulsipur*<sup>7</sup>. This principle has been reiterated by the Supreme Court in *M.R.F. Ltd. v. Inspector Kerala Govt.*<sup>8</sup> and *State of Punjab v. Tehal Singh*<sup>9</sup>

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6 AIR 1990 SC 261

7 AIR 1980 SC 882

8 (1998) 8 SCC 227

9 (2002) 2 SCC 7

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.

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.*<sup>10</sup> 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.*<sup>11</sup> 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.”

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10 2004 (2) CGLJ 327

11 1995 MPLJ 152

30. The Supreme Court in *Jammu and Kashmir National Panthers Party v. Union of India*<sup>12</sup> 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*<sup>13</sup> 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 ”

8. Taking into consideration the aforementioned legal position as it stands, if we look into the grounds raised by the petitioner, this Court does not find any strong case made-out by the petitioner calling for an interference to the notification dated 16.10.2019 and the same seems to be passed purely in-accordance-with law and the power which has been conferred upon the concerned authorities.

9. The writ petition, thus fails and is accordingly rejected.

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

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12 (2011) 1 SCC 228

13 1994 Supp (1) SCC 324