

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 19 of 2020**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development, Mahanadi Bhawan Mantralaya, Atal Nagar, New Raipur, Chhattisgarh
2. The Collector Bemetara, District Bemetara, Chhattisgarh.
3. The Sub Divisional Officer (Revenue) Saja, Bemetara, District Bemetara, Chhattisgarh.
4. The Tahsildar Saja, District Bemetara, Chhattisgarh.

---- Petitioners**Versus**

1. Bhuniram Sahu S/o Late Shri Raghuveer Sahu, Aged About 60 Years, Up - Sarpanch, Gram Panchayat, Bhardakala, R/o Village Bhardakala, Police Station Saja, District Bemetara, Chhattisgarh
2. The Chief Executive Officer, Janpad Panchayat, Saja, District Bemetara, Chhattisgarh

---- Respondents

For State/Petitioners	:	Mr. Jitendra Pali, Advocate
For the Respondents	:	Mr. Sanjeev Kumar Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28.01.2020**

1. The present review petition has been filed seeking review of the judgment and order dated 28.11.2019 passed in WPC No. 4186 of 2019.
2. The original challenge in the writ petition was to the notification dated 05.10.2019 and 16.10.2019 for determining of the limits of Gram

Panchayats and the dependent villages attached to each of the Gram Panchayats. The said writ petition got disposed of along with a bunch of writ petitions, the leading among which was WPC No.3855 of 2019.

3. The main ground raised by the State counsel in the present review petition is that the said writ petition got wrongly tagged with the bunch of writ petitions which got disposed of on 28.11.2019. According to the State counsel, the facts in the instant case are quite different as compared to the main writ petition which was heard on the said date.
4. According to the State counsel, it is a case where initially a preliminary notification was published on 16.09.2019 whereby village Amlideeh was shown as dependent village of Gram Panchayat Muswadeeh. Subsequently, when the final notification was passed on 28.09.2019 there was a change and village Amlideeh was brought as a dependent village of Gram Panchayat Bharda. The said notification was subjected to challenge vide WPC No. 3687/2019. However, since subsequently another preliminary notification was published on 05.10.2019, the earlier writ petition filed by the petitioner i.e. WPC No. 3687/2019 was withdrawn. State counsel submits that subsequent to the publication of the preliminary notification on 05.10.2019, no strong objection was raised by the petitioner showing the difficulty or inconvenience that the villagers of Gram Panchayat Bharda would face in the event of village Amlideeh being brought as a dependent village of Gram Panchayat Bharda. According to the State counsel, in fact there would not be any substantial change that the villagers of Gram Panchayat Bharda would face in the light of the notification dated 05.10.2019 and also the final notification that was published on 16.10.2019. According to the State

counsel if at all if there was supposed to be an objection, it ought to have been from the villagers of Amlideeh who in fact have not opposed the subsequent notification and it is the present villagers of Gram Panchayat Bharda who are opposing the notification and as such the petitioner in WPC No. 4186/2019 does not have any locus to challenge the same.

5. According to the counsel for the original petitioner i.e. Bhuniram Sahu, the distance between Muswadeeh and Bharda is quite far away and therefore, Amlideeh should not have been made a dependent village of Gram Panchayat Bharda, rather it should have been a dependent village of Muswadeeh. Further contention of the petitioner is that the villagers of Bharda had already vide objection dated 30.09.2019 submitted their objection and they had again raised an objection on 10.10.2019 after the second preliminary notification dated 05.10.2019 was published but the authorities concerned have not considered these objections and straightaway published the final notification.
6. At this juncture, state counsel referred to the decision of this High Court in the case of **Gramvasi Gram Khari Gram Panchayat Dhamni And Another Vs. The Collector, Baloda Bazar And Others** decided on 24.11.2014 in WPC 1996/2014 wherein this High Court in very categorical terms has held that the notifications published under Section 125(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and Rule 3 of the Chhattisgarh Panchayat (Alteration of Limits, Disestablishment or Change of Headquarters) Rules, 1994 are legislative in nature and no scope is left for the High Court for interference under Section 226 of the Constitution of India in such matters.

7. Having heard the contentions put forth on either side and on perusal of the record what clearly reflects is that the petitioner in the present writ petition is a resident of village Bharda. Village Bharda was a Gram Panchayat even under the previous notification as also in the present notification. The only difference is that village Amlideeh which was earlier is said to be dependent village of Gram Panchayat Muswadeeh has been shifted to be the dependent village of Bharda. The said change brought in by notification dated 05.10.2019 and 16.10.2019 would not in any manner have an adverse effect whatsoever so far as the petitioner is concerned who is the resident of village Bharda. There does not seem to be any objection raised on behalf of the residents/villagers of village Amlideeh. In the absence of any objection from the villagers of Amlideeh, this Court is of the opinion that no strong case is made out by the petitioner Bhuniram Sahu raising objection to the notification dated 05.10.2019 as well as notification dated 16.10.2019.
8. This High Court in the case of Gramvasi Gram Khari (supra) dealing with the power exercised by the Collector on the subject involved has in paragraphs 26 to 29 held as under:

“26. In *Sundarjas Kanyalal Bhathija and Others v. The Collector, Thane, Maharashtra and Others* (AIR 1990 SC 261) 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 *Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur* (AIR 1980 SC 882). This principle has been reiterated by the Supreme Court in *M.R.F. Ltd. v. Inspector Kerala Govt.*

and Others ((1998) 8 SCC 227) and State of Punjab v. Tehal Singh and Others ((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 instrument 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. and Others (2004 (2) CGLJ 327) 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. and Another* (1995 MPLJ 152) the Division Bench of the Madhya Pradesh High Court held thus :

“Notifications 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.”

9. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that a strong case for allowing the Review Petition has been made out. Accordingly, the Review Petition stands allowed and the order dated 28.11.2019 passed in WPC No. 4186/2019 stands recalled.
10. This Court further finds that there was no merits brought forth by the petitioner therein calling for an interference with the notification dated 05.10.2019 and 16.10.2019 and therefore the said writ petition i.e. WPC No. 4186/2019 also as a consequence is ordered to be rejected. Accordingly, WPC No.4186/2019 stands rejected.
11. Let a copy of this order be made part of record of WPC No. 4186 of 2019.

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