

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 2 of 2020**

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

---- Petitioners**Versus**

- Premchand Sahu S/o Late Shri Narayan Prasad Sahu, Aged About 45 Years, R/o Village - Nawagaon, Post – Chandanu, Police Station Nandghat, Tehsil Bemetara, District Bemetara, Chhattisgarh

---- Respondents

For the State/Petitioners	:	Mr. Jitendra Pali, Advocate
For the Respondent	:	Mr. Prateek Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30.01.2020**

1. The present review petition has been filed seeking review of the order dated 28.11.2019 passed by this Court in WPC No. 4138/2019.
2. The ground for review is that the writ petition had wrongly got tagged with the bunch of writ petitions which were disposed of on 28.11.2019 and the facts in the instant case were quite different as compared to the other writ petitions which were decided on the same date.
3. The contention of the learned State counsel is that the challenge in the

writ petition i.e. WPC No. 4138/2019 was to the notification dated 16.10.2019. The contention of the petitioner in the pleadings was that after the preliminary notification dated 16.09.2019 the final notification was issued on 16.10.2019 and there was a change brought out by the respondent authorities while the final notification was issued. According to the State counsel, the petitioner has not brought the correct fact to the notice of the Court inasmuch as after notification dated 16.09.2019 there was another notification issued on 28.09.2019. Thereafter, the respondent authorities issued a fresh preliminary notification on 05.10.2019 which has been affirmed vide the impugned notification dated 16.10.2019. Counsel for the State submits that so far as the issuance of notification dated 28.09.2019 and 05.10.2019 is concerned, the original writ petition is silent on this aspect. Further contention of the State counsel is that the State authorities had issued a fresh preliminary notification on 05.10.2019 showing that village Nawagaon to which the petitioner i.e. the respondent herein belongs was made dependent village of Gram Panchayat Mulmula. This notification, in spite of its publication, was not objected to by the petitioner at any point of time and subsequently the final notification to the same effect was passed on 16.10.2019. Therefore, the writ petition filed by the petitioner i.e. WPC No. 4138/2019 would not have been maintainable at that juncture at all.

4. So far as the limitation of the areas of a Gram Panchayat is concerned, counsel for the State submits that the same is purely a legislative power conferred upon the Collector on that he has to act in accordance with the guidelines framed by the State Govt. in this regard and there is

no scope of interference left unless the same is said to be in contravention to any law in force.

5. 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 No. 1996 of 2014 (reported in AIR 2015 Chh 7) 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.
6. 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 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. 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.”

7. 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. 4138/2019 stands recalled.
8. This Court further finds that there was no merits brought forth by the petitioner therein calling for an interference with the notification dated 16.10.2019 and therefore the said writ petition i.e. WPC No. 4138/2019 also as a consequence is ordered to be rejected. Accordingly, WPC No. 4138/2019 stands rejected.
9. Let a copy of this order be made part of record of WPC No. 4138 of 2019.

Sd/-
P. Sam Koshy
Judge