IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 4418 of 2020

Decided on: 18.12.2020

Hans Raj & Ors. ...Petitioners

Versus

State of H. P. & Ors. ...Respondents

Coram:
Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? [1] **No.**

For the Petitioners : Mr. Bimal Gupta, Sr. Advocate with Mr. Satish Sharma, Advocate.

For the Respondents : Mr. Ashok Sharma, Advocate General with Mr. Vikas Rathore, Addl. A.G., Mr. Bhupinder Thakur, Ms. Seema Sharma and Mr. Yudhvir Singh Thakur, Deputy Advocate Generals, for respondents-State.

Mr. Ajit Saklani, Advocate, for H.P. State Election Commission.

(**Through Video Conferencing**)

Tarlok Singh Chauhan, Judge (Oral)

The instant petition has been filed for the grant of following substantive relief(s):

> "(A) The respondents No. 1 and 2 may kindly be directed to take immediate steps for notifying the bifurcation of existing Gram Panchayat Pargor into two Panchayats as recommended by respondent No. 3 vide Annexure P-5, in larger public interest.
>
> (B) In alternative if the respondents No. 1 and 2 have already taken a decision not to bifurcate the Gram Panchayat Pargor, in that eventuality the respondents No. 1

[1] Whether reporters of the local papers may be allowed to see the judgment? yes

> and 2 may kindly be directed to reconsider the bifurcation of Gram Panchayat Pargor in in view of Annexure P-5.

2. A Writ of Mandamus can be issued only when there is a legal right that the parties asking for the writ to compel the performance of statutory duties cast upon the authorities.

3. It is more than settled that creation/bifurcation of Gram Panchayat is essentially a policy matter, which is in the exclusive discretion, domain and jurisdiction of the State.

4. Additionally and more importantly, declaration of Sabha area is required to be done, in accordance with Section 3 of the Himachal Pradesh Panchayati Raj Act, 1994, which may be at the instance of the Gram Sabha concerned or at the instance of the Government, as is clearly evident from the bare reading of Section 3 of the Act, which reads as under:-

> 3. Declaration of Sabha area.- (1) The Government may, by notification, declare any village or group of contiguous villages with a population of not less than one thousand and not more than five thousand to constitute one or more Sabha areas for the purposes of this act and also specify its headquarter:
>
> Provided that in a Scheduled area the Government may by order declare any village or group of contiguous villages with a population of less than one thousand to constitute a Sabha area:
>
> Provided further that the Government may, after having due regard of the geographical location, lack of means of transport and communication and administrative convenience, declare an area comprising a village or group of contiguous villages having a population either less than

> one thousand or more than five thousand to constitute a Sabha area.
> (2) The Government may, at the request of the Gram Sabha concerned or otherwise, and after previous publication of a proposal by a notification, at any time,-
> (a) increase any Sabha area by including within such Sabha area any village or group of villages; or
> (b) diminish any Sabha area by excluding from such Sabha area any village or group of villages; or
> (c) alter the headquarter of any Sabha area; or
> (d) alter the name of any Sabha area; or
> (e) declare that any area shall cease to be a Sabha area:
> 2[**********]
> 3[(2-A) When on account of the reason that the Sabha area is, during the term of the Gram Panchayat, increased or diminished or ceased under sub-section (2), the increase or diminution or cessation of the Sabha area shall not affect the term of the office bearers of Gram Panchayat, till the expiration of the duration of the Gram Panchayat specified in sub-section (1) of section 120 or its dissolution under section 140 of this Act.]
> (3) If the whole of the Sabha area is included in a municipality, the Sabha area shall cease to exist and its assets and liabilities shall in the manner prescribed be disposed of.

5. The instant petition, no doubt, makes reference to certain resolutions of the Gram Panchayat recommending therein its bifurcation. In case the respondents have not given effect to upon the resolutions, then the aggrieved, if any, shall only be the Gram Panchayat and not any individual, thus the petitioner has no *locus standi* to file the instant petition.

6. Noticeably, save and except for the relief, as reproduced above, the petitioner has not sought for any other relief and once that be so, obviously then the issue, as raised in this petition, is not justifiable as no mandamus can be sought for bifurcation of Gram Panchayat(s) under Article 226 of the Constitution at the instance of an individual.

7. Similar reiteration of law can be found in the judgments rendered by this Court in ***CWP No. 4602 of 2020, titled Ratti Ram vs. State of H.P. & Ors., decided on 16.12.2020, CWP No. 4118 of 2020, titled Bihari Lal vs. State of H.P. & Ors., decided on 16.12.2020 and CWP No. 3999 of 2020, titled Joginder Singh and Ors., decided on 16.12.2020***.

8. In view of aforesaid discussion, we find no merit in the instant petition and the same is accordingly dismissed. However, this will not prevent the concern Gram Panchayat or the majority of its inhabitants to approach this Court for the redressal of the grievances on same and similar cause of action. Pending application(s), if any, also stands disposed of. Parties are left to bear their own costs.

(Tarlok Singh Chauhan)
Judge

(Sandeep Sharma)
Judge

18th December, 2020
(sanjeev)