

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7016-2021

Date of decision: 16.05.2022

Suman

...Petitioner

Vs.

State of Haryana and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Sanjay Vashisth, Advocate for the petitioner.

Mr. Ankur Mittal, Addl.A.G., Haryana with
Mr. Saurabh Mago, A.A.G., Haryana.

Ritu Bahri, J.

The petitioner is seeking writ of mandamus directing the respondents to take a decision on the request of the petitioner and other co-villagers forwarded vide resolution dated 26.01.2019 (Annexure P-1), application dated 07.02.2020 (Annexure P-2), application dated 28.07.2020 (Annexure P-3) and application dated 04.03.2021 (Annexure P-11) for constituting a different panchayat for the village Jalalpur Mafi, block Hodal District Palwal by separating it from Gram Panchayat Dakora block Hodal District Palwal.

Learned counsel for the petitioner has argued that at present population of village Jalalpur Mafi is about 700 and as per last census it was 671. The said village is under the gram panchayat of village Dakora, which is having a distance of more than 3.5 kms from each other and due to this reasons, the residents of village Jalalpur Mafi have to be dependent upon the village panchayat Dakora for many things such as education, transport and medical facilities etc. He has further submitted that resolution dated

26.01.2019 (Annexure P-1), application dated 07.02.2020 (Annexure P-2), application dated 28.07.2020 (Annexure P-3) and application dated 04.03.2021 (Annexure P-11) had been sent for carving out separate Panchayat for the village Jalalpur Mafi but no action has been taken so far. The petitioner filed CWP-14362-2020 which was disposed of on 25.09.2020 directing the competent authority to take decision on the representation dated 28.07.2020 in accordance with law.

Communications were effected between Block Development and Panchayat Officer, Hodal and Deputy Commissioner, Palwal vide letters/memo dated 06.10.2020 and 23.11.2020 (Annexures P-6 and P-7 respectively). The Deputy Commissioner, Palwal sent a letter dated 26.11.2020 to the Director General, Development and Panchayat Department, Haryana, Chandigarh for constituting a separate Gram Panchayat of village Jalalpur Mafi from Gram Panchayat Dakora Block Hodal District Palwal. Some clarifications were sought by the Director General, Development and Panchayat Department Haryana, Chandigarh vide letter dated 08.12.2020 (Annexure P-9).

Learned counsel for the petitioner has argued that finally notification dated 23.02.2021 (Annexure P-10) was issued by the Development and Panchayats Department whereby newly constituted gram panchayats were declared in different districts including District Palwal. However, separate panchayat for the village Jalalpur Mafi, block Hodal District Palwal was not constituted.

The petitioner has again made representation dated 04.03.2021 to the Additional Chief Secretary, Development and Panchayat Department Haryana, Chandigarh. In the said representation, an example of the District

Palwal has been cited. In District Palwal, village Katesara to Karora Shahpur separate panchayats were constituted in block Pirthla. Its hadbast No. is 61 and vote number is only 380 which is less than the fixed vote number. However, the vote numbers in village Jalalpur Mafi are 462 and hadbast number is 121 which is more than the fixed vote numbers.

In this backdrop, the petitioner is seeking direction to the respondents to again consider the resolution sent by the villagers of the village Jalalpur Mafi and constitute a separate gram panchayat.

Learned counsel for the State on the basis of written statement dated 07.03.2022 filed by respondents No. 1, 2 and 3 has argued that vide notification dated 23.02.2021 (Annexure R-2), 107 new Gram Panchayats were constituted and the proposal of the petitioner to constitute a new Gram Panchayat in the name of Jalalpur Mafi alongwith 76 Gram Panchayats had not been approved. He has referred to the judgments passed by this Court in **CWP-7492-2014** titled as ***Gram Panchayat Khizrabad vs. State of Haryana***, decided on 23.04.2014 and **CWP-7428-2021** titled as ***Balwan and another vs. State of Haryana and others***, decided on 18.11.2021 to contend that constitution of a new Gram Panchayat was a legislative function to be exercised in public interest to speed up the development and welfare activities. He, while referring to the judgment passed by the Supreme Court in ***State of Punjab vs. Tehal Singh 2002 (2) RCR (C)1*** submits that Section 3 of the Punjab Gram Panchayat Act, 1952 and Section 4 of the Punjab Panchayati Raj Act, 1992, are in legislative character and no question of principles of natural justice arises.

The main grievance of the petitioner is that though in paragraph 5 of the written statement it has been stated that final approval has been

given to 107 new Gram Panchayats as per notification dated 23.02.2021 (Annexure R-2) but with respect to the resolution for the petitioner's Gram Panchayat, no reasoning had been given.

A separate written statement dated 22.02.2022 filed on behalf of respondents No. 3 and 4 has been placed on record. As per the letter dated 11.11.2020 (Annexure R-1), the Sub Divisional Officer (c) Hodal recommended to the Deputy Commissioner Palwal not to bifurcate Gram Panchayat Dakora to constitute new Gram Panchayat Jalalpur Mafi keeping in view that the election process has started and the election may be declared in near future. It is further stated in the said written statement that the report from B.D.P.O. Hodal and Sub Divisional Officer (c) was called by the Deputy Commissioner Palwal and the representation was decided by the Deputy Commissioner, Palwal vide letter dated 12.11.2020 which is attached as Annexure R-2.

Heard learned counsel for the parties and perused the case file.

In the present case, the Deputy Commissioner, Palwal had examined the report sent by Sub Divisional Officer (c) dated 11.11.2020 wherein he had recommended that no separate Gram Panchayat can be constituted for village Jalalpur Mafi under the prevailing circumstances. The Deputy Commissioner, Palwal, vide order dated 12.11.2020 (Annexure -R/2) disposed of the representation as the final decision is to be taken by the Government under Section 7 of the Haryana Panchayati Raj Act, 1994.

In a separate written statement dated 07.03.2022 filed by the Director, General Development & Panchayats Department, Haryana, Chandigarh on behalf of respondents No. 1 and 2. In para 4 of the said written statement, it is stated that after receiving proposal for creation of

new Gram Panchayat in the name of Jalalpur Mafi by bifurcating existing Gram Panchayat, Dakora from the Deputy Commissioner, Palwal vide memo no. 5218/P dated 26.11.2020, the said proposal was submitted before the Committee in its meeting which was scheduled for 16.12.2020. The said Committee submitted its decision before the Hon'ble Chief Minister, Haryana for approval. After approval, the Government of Haryana, Development & Panchayat Department vide notification dated 23.02.2021 (Annexure R-2) constituted 107 new Gram Panchayats. However, the name of Jalalpur Mafi alongwith 76 Gram Panchayats had not been approved.

In the present case, the Government has taken a conscious decision not to create new Gram Panchayat for the village Jalalpur Mafi. At this stage, reference can be made to a judgment passed by Supreme Court in ***State of Punjab vs. Tehal Singh 2002 (2) RCR (C)1*** in which it is held that Section 3 of the Punjab Gram Panchayat Act, 1952 and Section 4 of the Punjab Panchayati Raj Act, 1992, are in legislative character and no question of principles of natural justice arises. The Punjab Acts do not provide for any opportunity of hearing of the residents before any area falling under a particular Gram Sabha is excluded and included in another. Notification to this effect issued under Sections 3 and 4 cannot be held bad merely on the ground of non-observance of principles of natural justice. Further, as per the judgments passed by this Court in ***Gram Panchayat Khizrabad's case (supra)*** and ***Balwan and another's case (supra)***, it is held that for the purpose of creation of new Gram Panchayat, resolution of Gram Panchayat/Gram Sabha was not required as per Section 7 of the Haryana Panchayati Raj Act, 1994. Constitution of a new Gram Panchayat was a legislative function to be exercised in public interest to speed up the

development and welfare activities. Even if Gram Panchayat, for some reasons does not resolve to its bifurcation, it shall not be impediment against the exercise of powers by the State Government under Section 7 of the Haryana Panchayati Raj Act, 1994.

With these observations, writ petition is dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

16.05.2022

Divyanshi

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No