

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.14793 of 2019
Date of decision: 05.08.2022

Mahabir Singh

...Petitioner

Vs.

State of Haryana and others

...Respondents

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

Present: Mr. S.K. Verma, Advocate,
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana,
and Mr. Saurabh Mago, AAG, Haryana.

Ritu Bahri, J. (oral)

Petitioner is seeking quashing of the order dated 06.03.2019 (Annexure P-6), whereby respondent No.2-Additional Chief Secretary-cum-Financial Commissioner has decided the legal representation and rejected the claim of petitioner and people of "Panna Bhiman" to constitute a separate Panchayat for their area.

Precise grievance of the petitioner is that village Farmana Khas is a big village and is having population of 9707 as per the census of 2011. Now, the population of this village has increased up to 13000. It constitutes a Sabha Area, which is divided into 20 wards. Total number of voters, as per voter list of the year 2015, are 6339. Those voters are to elect one Sarpanch and 20 Panches. Keeping in view that population of the village was very large, the petitioner along with 40-50 respectable persons of the area, made an application dated 16.02.2017 (Annexure P-1) to the Deputy

Commissioner, Rohtak, for bifurcation of the above said Gram Sabha on the ground that people of the area were being deprived of from the development and they have to wait even for the basic amenities due to lack of proper representation. When no action was taken on thier application, they sent a legal notice dated 01.07.2017 seeking bifurcation and constitution of a separate Panchayat of “Panna Bhiman”. Thereafter, the petitioner filed CWP No.10944 of 2018, which was disposed of by this Court vide order dated 03.05.2018 (Annexure P-5), thereby directing the respondents to consider and decide the legal notice expeditiously.

Pursuant to the order dated 03.05.2018 (Annexure P-5) passed by this Court, respondent No.2, vide order dated 06.03.2019 (Annexure P-6), rejected the claim of the petitioner keeping in view the report dated 14.12.2018 submitted by the DDPO, Rohtak and resolution No.4 dated 02.10.2018 passed by the Gram Sabha, Farmana Khas.

Upon notice, a detailed reply has been filed by respondent Nos. 1 to 3 and 6, wherein reference has been made to the report of the Block Development and Panchayat Officer (BDPO), Meham dated 28.11.2018 (Annexure R-1/T) and resolution dated 02.10.2018 (Annexure R-2/T). These reports were sent to the Director, Development and Panchayat Department, Haryana, vide letter dated 14.12.2018 (Annexure R-3/T), whereby members of Gram Sabha, Farmana Khas, resolved not to constitute two Panchayats from existing Gram Sabha area. Keeping in view the above report, Principal Secretary to Government of Haryana, vide letter dated 06.03.2019 (Annexure R-4/T) rejected the claim of the petitioner and decided not to constitute two Panchayats out of one Sabha area. While rejecting the representation, the competent authority had accepted the

resolution dated 02.10.2018 passed by the Gram Sabha, Farmana Khas.

Heard, learned counsel for the parties.

Learned counsel for the petitioner has referred to Sections 7 and 8 of the Haryana Panchayati Raj Act, 1994, which provide that the Government, in exceptional case, can constitute a separate Sabha area, where the population is less than 500. As per Section 8, the Government can constitute two Sabha areas, out of the same revenue estate, subject to the condition of population of 500 persons.

Question for consideration, in this petition, is whether under Sections 7 and 8 of the Haryana Panchayati Raj Act, the Government is bound to constitute a separate Sabha area?

This issue had come up for consideration before Hon'ble the Supreme Court in **State of Punjab vs. Tehal Singh**, 2002 (2) RCR (Civil) 1. In that case, while examining the provisions of Punjab Gram Panchayat Act, 1952, it was held that it would depend upon the legislative wisdom to create a separate Gram Sabha. The Act does 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 issued under the above said Act cannot be held bad merely on the ground that it was against the principles of natural justice. In para 5 of the above judgment, it was observed as under:-

“5. Once it is found that the power exercisable under [Sections 3](#) and [4](#) of the Act respectively is legislative in character, the question that arises is whether the State Government, while exercising that power, the rule of natural justice is required to be observed? It is almost settled law that an act legislative in character-primary or subordinate, is not subjected to rule of natural justice. In case of legislative act of legislature, no question of application of rule of natural justice arises. However, in case of subordinate legislation, the legislature may provide for observance of

principle of natural justice or provide for hearing to the resident of the area before making any declaration in regard to the territorial area of a Gram Sabha and also before establishing a Gram Sabha for that area. We have come across many enactments where an opportunity of hearing has been provided for before any area is excluded from one Gram Sabha and included it in different Gram Sabhas or a local authority. However, it depends upon the legislative wisdom and the provisions of an enactment. Where the legislature has provided for giving an opportunity of hearing before excluding an area from a Gram Sabha and including it in another local authority or body, an opportunity of hearing is sine qua non and failure to give such an opportunity of hearing to the residents would render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for any opportunity of hearing or observance of principle of natural justice before issue of a declaration either under [Section 3](#) or [Section 4](#) of the Act, the residents of the area cannot insist for giving an opportunity of hearing before the area where they are residing is included in another Gram Sabha or local authority. [In Rameshchandra Kachardas Porwal and Ors. v. State of Maharashtra](#) (supra), this court held as thus:

“In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was the duty of the concerned authority to invite and hear objections. Failure to do so was a violation of the yard at one place and establishing it elsewhere was, therefore, bad. It was objections before a "market area" was declared under the Act, so should objection be invited and heard before a 'market yard' was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural

justice."

In the present case, the provisions of the Act do not provide for any opportunity of hearing to the residents before any area falling under a particular Gram Sabha is excluded and included in another Gram Sabha. In the absence of such a provision, the residents of that area which has been excluded and included in a different Gram Sabha cannot make a complaint regarding denial of opportunity of hearing before issue of declarations under [Sections 3](#) and [4](#) of the Act respectively. However, the position would be different where a house of a particular resident of an area is sought to be excluded from the existing Gram Sabha and included it in another Gram Sabha. There the action of the Government being directed against an individual, the Government is required to observe principles of natural justice. For the aforesaid reasons, we are of the view that no opportunity of hearing was required to be given before making declaration either under [Section 3](#) or [Section 4](#) of the Act by the Government."

Thereafter, learned Single Bench of this Court in **Gram Panchayat, Khizrabad vs. State of Haryana and others**, 2014 (2) L.A.R. 186, was examining a case of creation/bifurcation of Gram Panchayat under the Haryana Panchayati Raj Act, 1994. The said petition was dismissed by observing that creation/bifurcation of the Gram Panchayat was essentially a policy matter which falls within the domain of the State Government and no mandamus can be sought for bifurcation of a Gram Panchayat under Article 226 of the Constitution of India.

In **Latif vs. State of Haryana and others**, 2016 (1) RCR (Civil) 196, a Division Bench of this Court was examining the provisions of Section 7 of the Haryana Panchayati Raj Act, 1994. The issue was with respect to the bifurcation of the existing Gram Sabha areas and the decision making process. It was held that even if, there is no resolution for bifurcation of a Gram Panchayat and a decision is taken by the State Government under Section 7 (1) of the Act, the Gram Panchayat can be bifurcated. In that case, no resolution for bifurcation was passed by the

existing Gram Panchayat. In para 36 of the judgment, it was observed as under:-

“36. This would leave us to deal with the last plea, namely, whether the absence of a resolution by the existing Gram Panchayat or Gram Sabha would invalidate the decision taken by State Government under Section 7[1] of the Act? The afore-said plea appears to be totally misdirected and misconceived and must fail. We say so for the reasons that firstly Section 7[1] does not contemplate such a requirement. Secondly, the instructions dated 23.03.1999 also nowhere suggest that in the absence of such a resolution, the proposal to constitute a new Gram Panchayat shall not be forwarded. Thirdly, the constitution of a new Gram Panchayat is a legislative function to be exercised in public interest to speed up the development and welfare activities. If a Gram Panchayat, for some reasons does not resolve to its bifurcation, it can not *per se* be an impediment against the exercise of powers by the State Government under Section 7 of the 1994 Act.”

Recently, this Court in **Balwan and another vs. State of Haryana and others**, CWP-7428-2021 (decided on 18.11.2021), had dismissed a writ petition, where the petitioners were seeking quashing of the notification dated 23.02.2021, whereby Gram Panchayat, Barwas had been bifurcated by carving out a separate Gram Panchayat for village Basirwas. In that case, a resolution for bifurcation/creation of new Gram Panchayat in the name of Basirwas was passed unanimously in the Gram Sabha in its meeting held on 21.02.2020 and it was examined by the Committee constituted by the Government of Haryana. The said Committee approved the resolution by giving relaxation to the condition of minimum population of 500 and thereafter, the Government of Haryana, vide notification dated 23.02.2021, constituted 107 new Gram Panchayats, including that of village Basirwas from the existing Gram Panchayat, Barwas and even reservation was done thereafter, under the Haryana Panchayati Raj Act, 1994.

In the present case, as per the report dated 28.11.2018

(Annexure R-1/T) submitted by the Block Development and Panchayat Officer, Meham and resolution dated 02.10.2018 (Annexure R-2/T) passed by the Gram Sabha, Farmana Khas, villages do not want to make two separate Gram Panchayats. The said resolution has been signed by maximum number of Panchayat Members. Thereafter, vide impugned order dated 06.03.2019 (Annexure P-6) the Government has taken a decision and rejected the representation made by the petitioner and others for creation of separate Gram Panchayat for their area. This decision has been rightly taken by accepting the view of majority of the people, as reflected in the resolution dated 02.10.2018 (Annexure R-2/T).

In the light of the above discussion, we find no reason to quash the impugned order dated 06.03.2019 (Annexure P-6) passed by respondent No.2.

No merits. Dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

05.08.2022
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No