A KARMAIL SINGH AND ANR.

v.

DARSHAN SINGH AND ORS.

DECEMBER 16, 1994

B [K. RAMASWAMY AND G.N. RAY, JJ.]

Punjab Gram Panchayat Act, 1952: Sections 3(q), 4 and 5.

State—Notification amalgamating two Gram Sabhas—Decision of amalgamation taken with a view to preventing misuse of office by one C *Sarpanch—Decision held not arbitrary exercise of power by Government.*

In exercise of its power under Section 4 of the Punjab Gram Panchayat Act, 1952 the State of Haryana issued a Notification dated 18.12.1991 amalgamating two Gram Sabhas namely Bhorakh and Harigarh Gram Sabhas. The State Government took the aforesaid D **decisions after taking into account the Report of Director of Panchayat that one Sarpanch has mismanaged and misused his office by illegally appropriating 86 acres and 2 kanals of land by obtaining fictitious and collusive decrees in the name of his supporters. The second respondent challenged the validity of the Notification before the Punjab and Haryana High Court. A Single Judge quashed it on the ground that** E **misuse of office by a Sarpanch could be prevented by other alternative correctional methods; the two existing gram sabhas which were functioning smoothly on democratic basis could not be amalgamated on account of misuse by one Sarpanch. The Division Bench also dismissed the appeal in limine.**

In appeal to this Court, on the question whether the High Court F **was right in its conclusion that the action of Government was vitiated by arbitrary exercise of power, it was contended on behalf of the appellant that under Section 4(1) read with section 3(q) of the Act, for constitution of a gram sabha area, the village must be a revenue estate as defined under section 3(q); Harigarh was not a revenue estate while** G **Bhorakh is a revenue estate. There cannot be two gram sabhas in one revenue estate.**

Allowing the appeal, this Court

HELD: 1. The decision taken by the state Govt. cannot be said to be irrelevant, arbitrary and unwarranted on the facts of the case.

H **[705 F]**

2. It is an executive policy decision taken by the Government to create separate Panchayats or to amalgamate the existing gram sabhas. It would not be for the courts to evaluate and decide whether the existence of the two gram sabhas should be continued or further bifurcated or amalgamated. [706 C] A

3. But the Government should have material and should consider the material before it takes the decision. In the absence of any material, it can be said that it is an arbitrary decision taken by the Government. But when there is some material before the authority or the Government and the same was considered though two views may be possible to be taken on the same material, it must be left to the Govt. to take a decision which unless it is vitiated by mala fides, the court cannot substitute its view to that of the Government in constituting two separate gram panchayats situated in the revenue estate or two contiguous villages with a population of not less than five hundred. [705 H, 706 A] B C

4. In this case, the Government appears to have thought that misuse or abuse of the power by a Sarpanch should be prevented by amalgamating two panchayats. Other corrective measures though may be evolved, the action of the Government cannot be said to be unwarranted or illegal or invalid. Accordingly, the impugned orders are set aside and the notification date 18.12.1991 is upheld. [705 E, 706 F] D E

5. Sub-section (1) of section 4 of the Punjab Gram Panchayat Act, 1952 indicates that a gram sabha area with a population of not less than 500 may be constituted, by a notification, by the Government to be a gram panchayat and that village must be a revenue estate as defined in Section 3(q) . But in a village, which, in other words a revenue estate, if population is more than 500, but needs one or more gram sabhas, there is no prohibition under section 4(1) for the Government to exercise the power declaring such a gram sabha area within the same revenue estate to be a Panchayat. For better or proper administration of the panchayat in the same revenue estate one or more gram sabha areas could be constituted by a notification declaring them to be separate gram panchayats. Therefore, the words 'or a group of contiguous villages', in the second part of section 4(1) need not necessarily be construed to mean for amalgamation of two revenue estates into one revenue estate. That is not the purport and import of the section or legislative intention. By amalgamation of the two revenue estates one gram sabha area may be constituted by a declaration. F G H

Section 4(1) intends to operate in that perspective and the second clause of section 4 appears to operate in that arena. Thus considered in the same revenue estate, depending upon the facts and exigencies for smooth, proper, efficient or convenient administration of the gram sabha area, one or more than one sabha areas could be declared by a notification constituting for each sabha area a gram panchayat for the purpose of the Act. [704 D, E, G, H, 705 A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 42 of 1995.

From the Judgment and Order dated 21.12.93 of the Punjab and Haryana High Court in L.P.A.No. 893 of 1993.

Manoj Swarup for the Appellants

M.K. Dua for the Respondents.

Ms. Nisha Baagchi for Ms. Indu Malhotra, for the State.

The following Order of the Court was delivered :

Leave granted.

The State Government of Haryana exercising the power under section 4 of the Punjab Gram Panchayat Act, 1952, (for short 'the Act') issued the notification dated 18.12.1991 amalgamating Bhorakh and Harigarh Gram Sabhas as Bhorakh Madan Harigarh Gram Sabha with consequential changes in the respective columns in Block Pehowa in Kurukshetra District. The said notification when was challenged by the second respondent and others in W.P.No. 499 of 1992, the learned Single Judge of the Punjab and Haryana High Court by his order dated November 2, 1993 quashed the said notification. On appeal in L.P.A. No. 893/93, by order dated 21.12.1993, the Division Bench summarily dismissed the appeal. Thus, this appeal by special leave.

It is not in dispute that in the year 1988 separate Gram Sabha areas were constituted which was upheld by the High Court. On November 13, 1991, the Gram Panchayat, Bhorakh had resolved requesting the Government to amalgamate the two Gram Panchayats into one. Thereon, the Block Development and Panchayat Officer in his Report dated November 28, 1991 recommended for amalgamation which was reaffirmed by his subsequent report dated 30.11.1991. But the Deputy Commissioner in his recommendation dated December 2, 1991 opined to maintain the two

Panchayats. On a representation made by the people, the Minister for Panchayats caused an enquiry made by the Director, Panchayats, who had noticed that the then Sarpanch one Atma Ram, by obtaining fictitious decrees in the names of third parties from Courts had unlawful possession of 86 acres and 2 kanals of Gram Panchayat (Shamlat) land and that therefore, it was a matter for amalgamation to avoid such mismanagement and misuse of the office. When it was sent back for further enquiry, the Deputy Director had agreed to it. In the meanwhile, a notification was issued on 11.12.1991 to maintain the two panchayats separately. After receipt of the second report, the Government have resolved and the Minister concerned had agreed for the amalgamation of the two pachayats and constitution of one panchayat as stated hereinbefore. As stated earlier, when the notification published under section 4(2) came to be challenged in the writ petition, the learned Single Judge quashed it mainly on the ground that misuse of the office by the Sarpanch could be prevented by other alternative correctional methods and on account of his misuse of the office, the two gram sabhas, existing earlier and were functioning smoothly on democratic basis, cannot be disturbed.

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The question, therefore, is whether the High Court was right in its conclusion that the action of the Government is vitiated by any arbitrary exercise of power? Shri Manoj Swarup, learned counsel for the appellants neatly argued raising two-fold contentions. Firstly, it is argued that under section 4(1) read with section 3(q) of the Act, for constitution of a gram sabha area, the village must be a revenue estate as defined under section 3(q). Harigarh was not a revenue estate while Bhorakh is a revenue estate. There cannot be two gram sabhas in one revenue estate. The High Court, therefore, has not considered this question of law. Though *prima facie* at first blush we were inclined to agree with him, but on proper analysis we find that there is no force in the contention. Section 3(q) reads thus :

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> "3. *Definitions* : In this Act unless the context otherwise requires:
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> xx xx xx
>
> (q) 'Village' means any local area, recorded "as a revenue estate" in the revenue records of the district in which it is situated."

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Section 4 reads thus:

> "4. *Demarcation of Sabha area:*

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A (1) Government may, by notification, declare any village or group of contiguous villages with a population of not less than five hundred to constitute one or more sabha areas:

xx xx xx

B (2) Government may, by notification, include any area or exclude any area from the Sabha area."

Under s.5 of the Act, the Government have the power, by a notification published in that behalf, to constitute a panchayat by name in every sabha area. The constitution by a notification of a sabha area declared by the State C Government, under section 4(1), may consists of any village, in other words, any revenue estate as defined under section 3(q) or group of contiguous villages with a population of not less than 500. The word 'or' at the end of the first clause cannot be read as 'and'. Sub-s.(1) of section 4 indicates that a gram sabha area with a population of not less than 500 may be constituted, by a notification, by the Govt. to be a gram panchayat and D that village must be a revenue estate. But in a village, which, in other words a revenue estate, if population is more than 500, but needs one or more gram sabhas, there is no prohibition under section 4(1) for the Govt. to exercise the power declaring such a gram sabha area within the same revenue estate to be a Panchayat. Take for instance in a revenue estate the population may be approximately 5,000 and in the revenue estate there may E be more than one village or hamlets or contiguous parts. For better or proper administration of the panchayat in the same revenue estate on or more gram sabha areas could be constituted by a notification declaring them to be separate gram panchayats. Therefore, the words 'or a group of contiguous villages', in the second part of section 4(1) need not necessarily be construed to mean for amalgamation of two revenue estates into one F revenue estate. That is not the purport and import of the section or legislative intention. Take an instance that where one revenue estate consists of only 300 population and another revenue estate may consists of 400 population, each revenue estate cannot be declared to be a separate gram panchayat, as minimum of 500 population required under section 4(1) G was a must but were not available. By amalgamation of the two revenue estates one gram sabha area may be constituted by a declaration. Section 4(1) intends to operate in that perspective and the second clause of section 4 appears to operate in that arena. Thus considered, we find that in the same revenue estate, depending upon the facts and exigencies for smooth, proper, efficient or convenient administration of the gram sabha area, one or more H than one sabha areas could be declared by a notification constituting for

each sabha area a gram panchayat for the purpose of the Act. After the constitution of separate gram sabha areas, by operation of sub-section(2), power has been given to the State Govt., for the same reasons, again to include or exclude same sabha area or a part thereof from the notified sabha area. In other words, section 4(2) gives power for the State Govt. to amalgamate two or more than one sabha areas and to constitute, by a declaration under s. 4(2) a single Gram Panchayat. In other words, power to constitute a panchayat included power to amalgamate two or more than one sabha area as one gram sabha. It would thus be clear that the Government had exercised the power under section 4 (2) to amalgamate Harigarh and Bhorakh and also Madan was added by public notification and named as "Bhorakh Madan Harigarh Gram Panchayat."

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But the second contention of Sri Manoj merits acceptance. It is seen that the Govenment not only had taken into consideration that there exist a high school, a mini bank and veterinary hospital but also with a view to avoid friction among the people of their respective locations, the Government thought it expedient to amalgamate the two gram sabhas into one. It would also be clear that Atma Ram appears to have misused his office and obtained fictitious and collusive decrees in the names of his supporters and had appropriated valuable 86 acres 2 kanals of the panchayat land for his personal benefit. The Govt. appears to have thought that such a misuse or abuse of the powere should be prevented by amalgamating two panchayats. Other corrective measures though may be evolved, the action of the Govt. cannot be said to be unwarranted or illegal or invalid. Atma Ram represents Harigarh and Bhorakh gram panchayat is represented by another sarpanch. It would appear that if a person, having sufficient influence over the people in the one area, when he had managed to secure the valuable gram panchayat property in his name for personal benefit, the Govt. thought it expedient that such misuse or abuse of office could be curbed and such insidious effects could be prevented by amalgamation. The decision taken, thereby, cannot be said to be irrelevant, arbitrary and unwarranted, on the facts of the case. It is seen that the public interest would be better served for taking appropriate decision by the Government either for constituting one or more than one gram sabha areas or amalgamating into an existing one. It is a public policy and an administrative decision taken by the Government. It is an administrative action. But the Government should have material and should consider the material before it takes the decision. In the absence of any material, it can be said that it is an arbitrary decision taken by the Government. But when there is some material before th authority or the Government and the same was considered though two views may be possible to be taken on the same

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material, it must be left to the Govt. to take a decision which unless it is vitiated by *mala fides*, the court cannot substitute its view to that of the Government in constituting two separate gram panchayats situated in the revenue estate or two contiguous villages with a population of not less than 5 hundred.

Mr. M.K. Dua, learned counsel appearing for the respondent has stated that the two gram sabhas, created on June 30, 1988, have been properly functioning and that, therefore, the Government was not justified in amalgamating the two panchayats into one. We have already stated that it is only an executive policy decision taken by the Government to create separate Panchayats or to amalgamate the existing gram sabhas. It would not be for the courts to evaluate and decide whether the existence of the two gram sabhas should be continued or further bifurcated or amalgamated. It is also stated in the additional affidavit that Atma Ram had not misused his office nor has taken the properties into his possession had in support thereof relied on the entries from the revenue records. It is further stated that it was done in the year 1966. We cannot appreciate that evidence. The report given by the Director of Panchayats shows that the Sarpanch had misused the office and obtained fictitious decrees. Necessarily the entries in the revenue records should be in the names of the spurious persons but that does not conclude that Atma Ram had not misused the office and the circumstance taken by the Government cannot be said to be irrelevant or arbitrary.

Under these circumstances, the learned Single Judge has committed manifest error of law in interfering with the notification. The Division Bench had not properly considered the problem from this perspective and merely dismissed the appeal in limine. The appeal is, accordingly, allowed. The impugned orders are set aside and the notification dated 18.12.1991 is upheld. Any action taken pursuant to the decision of the High Court or any elections were conducted to the respective gram panchayats, the same would be illegal and should be done once again in accordance with law, the appeal is allowed and the writ petition stands dismissed. No costs.

T.N.A. Appeal allowed.