

Jankidas Bairagi and Another Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-22-2001

Reported in : 2001(2)MPHT229; 2001(2)MPLJ477

Judge : Mr. Bhawani Singh, C.J. and ;A.K. Mishra, J.

Acts : Madhya Pradesh Panchayat Raj (Sanshodhan) Adhiniyam, 2001 - Sections 4, 5, 5-A, 6, 6-C(2), 7, 7-A, 7-B, 7-L, 7-M and 49; [Constitution of India](#) - Article 243, 243-A, 243-G and 243-H; Madhya Pradesh Panchayat Raj Adhiniyam, 1993 - Sections 2 and 49-A

Appeal No. : Writ Petition No. 1462/2001

Appellant : Jankidas Bairagi and Another

Respondent : State of M.P.

Advocate for Pet/Ap. : Shri N.C. Jain, Sr. Adv. and ;Shri Rakesh Jain, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Bhawani Singh, C.J.

1. The Madhya Pradesh Panchayat Raj Adhiniyam, 1993, has been amended by the 'Madhya Pradesh Panchayat Raj (Sanshodhan) Adhiniyam, 2001' (Act No.

3/2001), published in M.P. Rajpatra (Asadharan), dated January 22,2001. The statement of objects and reasons mentions the object which necessitated this amendment. It is to ensure comprehensive development of villages through decentralisation, to establish a system of direct democracy empowering Gram Sabhas with such powers so as to enable them to function as self-governing units and with a view to ensure greater community participation in decision making and implementation, Standing Committees and Adhoc Committees of the Gram Sabha are proposed to be constituted and necessary provisions made for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women Members. To enable the Gram Sabhas to achieve economic self-sufficiency, necessary power to impose tax and constitution of Gram Kosh has been provided.

2. The petitioner 1 is Sarpanch of Gram Panchayat, Karanj, Janpad Panchayat - Tarana, District Ujjain, while the petitioner 2 is a resident of Gram Panchayat Karanj (Ujjain). They are aggrieved by this amendment, particularly Sections 6, 7, 7-A to 7-L and the Schedule to the Panchayat (Sanshodhan) Adhiniyam, 2001. Reference to the averments contained in the petition broadly suggest that constitution of Gram Sabhas in every village will annihilate the stability, standing and sustenance of the Gram Panchayats, which are the elected bodies owing existence to Article 243B of the [Constitution of India](#), with powers, authority and responsibilities as per Article 243G, and power to impose taxes under Article 243H of the Constitution. By the constitution of Gram Sabhas in every village, powers, authority and responsibilities have been affected fundamentally and functions hitherto before discharged by them have been handed over to Gram Sabhas, which are non- elected Institutions. Their constitution is not envisaged in the Constitution, therefore, constitution of more than one Gram Sabha is ultra-vires. The definition of 'village' under Article 243 of the Constitution has been eroded in a manner which makes the constitution of Gram Sabhas and Panchayats thoroughly uncertain and devoid of exact manner. It is also submitted that the Panchayats have authority to establish Panchayat funds in which all the sums received by the Panchayats are to be put and applied by it for the purpose mentioned in the Panchayat (Sanshodhan) Adhiniyam, 2001, by providing Gram Kosh fund in the Gram Sabha and its utilisation in manner suggested is not proper, since the Treasurer and Secretary are not elected persons. The duplicity of system for

utilisation of funds is bound to create confusion. Similarly, the Constitution of Committee, providing for reservation, holding of meetings and decision to be taken by it are thoroughly cumbersome and full of confusion with no object sought to be achieved. The provisions with respect to maintenance of accounts by the Gram Sabha has tinge of conflict, uncertainty and erosion of powers and responsibility of the Panchayats.

3. The basic relief sought by the petitioners is that the amending Act, 2001, may be declared ultra-vires, being vague and in conflict with the provisions of unamended Act with no object sought to be achieved being patently illegal and likely to hamper the activity of Gram Panchayat nor in the interest and welfare of the village people. After going through the facts contained in the petition and submissions advanced by Shri N.C. Jain, learned Senior Counsel for the petitioners, we find that the challenges by the petitioners against the constitution of Gram Sabhas are thoroughly vague, unsustainable and based on apprehension.

4. The [Constitution of India](#) in Part IX provides for institution of Panchayats at various levels, one such being Gram Sabha, then Gram Panchayat, Janpad Panchayat and Zila Panchayat. Article 243A of the [Constitution of India](#) provides for Gram Sabha. It exercises such powers and performs such functions at the village level as the Legislature of the State may, by law, provide. Section 5-A of the Panchayat (Sanskodhan) Adhiniyam, 2001, provides for Gram Sabha for every village. It is a body corporate having perpetual succession and a common seal. It is competent to sue and to be sued and has power, subject to the provisions of this Act and Rules made thereunder, to acquire, hold and dispose of any property movable or immovable, to enter into contract and to do all other things necessary for the purpose of this Act. Therefore, Gram Sabha has been provided for each village and it is to be understood in this context as per Article 243 of the [Constitution of India](#) read with Section 2 (xxix) of the M.P. Panchayat Raj Adhiniyam, 1993. The Gram Sabha is a body consisting of persons registered in the electoral rolls relating to a village comprised with the area of the Panchayat at the village level. Gram Panchayat, Janpad Panchayat come at intermediate levels and Zila Panchayat, the Apex Institution of the Panchayat, in a district. The village is taken as a unit for establishing Gram Sabha. It is enshrined in the Constitution

like Panchayat. It existed in M.P. Panchayat Raj Adhiniyam, 1993. Both have been assigned separate powers, functions and responsibilities and authority. It is envisaged in Article 243A of the [Constitution of India](#). Section 6 of the Panchayat (Sanshodhan) Adhiniyam, 2001, is substitution of Section 6 of the M.P. Panchayat Raj Adhiniyam, 1993. It provides for holding a meeting by the Gram Sabha Quorum, manner, participation and decision on matters falling within its jurisdiction. Sections 6-A to 6-C provide for Special Meeting of Gram Sabha, Secretary of Gram Sabha and decision by Gram Sabha, and resolution of disputes as to matters contained in sub-section (2) of Section 6-C. Section 7 of the M.P. Panchayat Raj Adhiniyam, 1993 provides for powers and functions and Annual Meeting of Gram Sabha. It has been amended and sub-section (1) for clauses (a) to (k) and new clauses (k) to (z) - (aa) to (w) have been incorporated. Under Section 7-A, Standing Committee and Adhoc Committee of Gram Sabha are to be constituted in manner and with limitations provided therein. Sections 7-B to 7-L provide for making provisions for President and Members of Committee and that of Gram Vikas Samiti, powers, functions and duties of Committees, removal of member, powers and duties of Gram Vikas Samiti, election/nomination of Secretary of Standing Committee, Appeal to a Committee against the decision of Gram Sabha, Budget, Gram Kosh, operation thereof, Account and Audit, and Control over Government employees. Section 7-M provides that the State Government may, by general or special order, add or withdraw functions and duties entrusted to Gram Sabha. Section 77-A empowers it to impose mandatory and optional taxes, nature of which finds mention in Schedule I-A and Schedule II-A.

5. The contentions that these provisions class with powers, functions and responsibilities of the Gram Panchayat, are, therefore, unsustainable. Both the Institutions aim at serving the people under their jurisdiction, which is not possible without an entrustment of functions, facilities and funds. The statutory provisions enumerated above, look after this requirement, they do not destroy the existence and utility of Gram Panchayat which performs distinct functions kept apart by Section 49 of the Panchayat (Sanshodhan) Adhiniyam, 2001 and Section 49-A of the M.P. Panchayat Raj Adhiniyam, 1993. Therefore, apprehensions that Gram Panchayat would be denuded of its responsibility and utility, have no basis and are liable to be rejected.

6. Proper reading of various provisions of the M.P. Panchayat Raj Adhiniyam, 1993 and Panchayat (Sanshodhan) Adhiniyam, 2001, would clearly demonstrate that challenges against the validity of some of sections raised by the petitioners have no substance. Since Gam Sabhas at the village level are being constituted for the first time, some of the functions at village level are going to be performed by it. There is a feeling of alienation and apprehension as to the role by Gram Panchayat, but a look at the real substance of the functions, would make it clear that they are constituted for discharging well defined functions in different areas. The contention that since the Gram Sabha comprised of non-elected persons, therefore, it would not be fit to operate the funds placed at its disposal whereas Gram Panchayat has elected members, therefore, elected persons would be fit to handle fund, cannot be accepted. Neither there is presumption that only elected persons are fit to manage financial matters nor it can be said so. Gram Sabha has separate funds like Gram Panchayat. From the statement of objects and reasons, it is crystal clear that object for constituting Gram Sabha is to enable people at the village level to participate in development of the village with respect to matters of their concern and interest and with a view to discharge them, the Gram Kosh has been established and power to augment financial resources conferred. Separate functions and powers have been vested in Gram Panchayat, Janpad Panchayat and Zila Panchayat.

7. What emerges out of the aforesaid discussion is that challenges raised by the petitioners against the provisions of Panchayat (Sanshodhan) Adhiniyam, 2001, do not rest on sound footing, therefore, they are liable to be rejected. Consequently, the petition is dismissed in limine.

Costs on parties.

8. Writ Petition dismissed.