

Balwan v. State Of Haryana , 2021 PLRonline 5206

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PUNJAB AND HARYANA HIGH COURT

Before: Justice Ritu Bahri, Justice Karamjit Singh

BALWAN and another – Petitioners

versus

STATE OF HARYANA and others – Respondents.

CWP-7428-2021

Haryana Panchayati Raj Act, 1994, S. 7, 8 – 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 – 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.

Mr. Vipin Yadav, for the petitioners. Mr. Ankur Mittal, Addl. A.G., Haryana, and Mr. Saurabh Mago, AAG, Haryana.

1. **Ritu Bahri, J. (Oral) – (18.11.2021)** – Petitioners are seeking quashing of the notification dated 23.02.2021 (Annexure P-7), whereby Gram Panchayat, Barwas, has been bifurcated by carving out a separate Gram Panchayat for village Basirwas.
2. Petitioners are residents of village Basirwas, Tehsil Loharu, District Bhiwani, which was part and parcel of Gram Panchayat, Barwas. Both villages Basirwas and Barwas are situated in close proximity and had been continuing under one Gram Panchayat i.e. Gram Panchayat, Barwas. Petitioners are registered voters of the said Gram Panchayat and are thus, members of the Gram Sabha. Total population of both the villages, as per last decennial census, is 2651, out of which, population of village Barwas is 2233 and that of village Basirwas is 418. A meeting was conducted on 21.02.2020 in village Basirwas with the proposed agenda of creation of separate Gram Panchayat for village Basirwas from the existing Gram Panchayat, Barwas. Thereafter, a resolution dated 21.02.2020 (Annexure

P-1) was passed, which was forwarded to the BDPO concerned. As per Section 7 of the Haryana Panchayati Raj Act, 1994, the Government may declare any village or part of a village or group of contiguous villages with population of not less than 500, to be constituted one or more Sabha Area and the population has to be ascertained on the basis of last decennial census. However, in exceptional cases, the Government may relax the limit of population of 500 for reasons to be recorded in writing. As per Section 8 of the said Act, the Government may by notification, establish a Gram Panchayat by name for every Sabha Area and that every Gram Panchayat shall consist of Sarpanch and Six or more number of Panches as per the population, subject to maximum of twenty members. Sections 11 and 12 of the Act provide meeting, quorum, powers and functions of the Gram Sabha.

3. For conducting extraordinary meeting, a requisition of the Panchayat Samiti or of not less than 1/10 of the total members of Gram Sabha in writing and also a notice of such meeting, stating the purpose for calling such meeting, must be published as per the prescribed procedure. Upon receipt of such requisition, the Sarpanch shall call an extraordinary general meeting of the Gram Sabha within thirty days from the receipt of such requisition. Further, the meeting of the Gram Sabha shall be conducted in the manner as prescribed with due regard to the requirement of quorum. In the present case, neither any prior notice for the general meeting nor any requisition of the Panchayat Samiti or of 1/10 members of the Gram Sabha has been received for calling the emergency meeting or passing the resolution dated 21.02.2020 (Annexure P-1). It is stated that the said meeting was attended by 171 members of Gram Sabha as against the total membership of Gram Sabha i.e. 1933, which is much less than the requisite norm of 1/10 and even out of such 171 members, only 133 supported the said proposal. The BDPO, vide letter dated 27.02.2020 (Annexures P-2 and P-3), recommended creation of separate Panchayat for village Basirwas. Vide letter dated 13.03.2020 (Annexure P-4), this proposal was sent back by the Deputy Commissioner, Bhiwani calling upon the BDPO to re-send the proposal with clear justification for carving separate panchayat of village Basirwas, as its population was less than the minimum prescribed population of 500. In compliance of the said letter, the BDPO, Loharu re- submitted the proposal on 17.03.2020 (Annexure P-5) and recommended for carving out separate Gram Panchayat keeping in view that difference between both the villages was 5 Kms. and villagers have to travel for obtaining the signatures of the Sarpanch. The petitioners sent a representation dated 28.02.2020 (Annexure P-6) registering their objections to the said resolution. However, finally vide notification dated 23.02.2021 (Annexure P-7), the Government bifurcated respondent-Gram Panchayat by carving out separate Sabha Area and Gram Panchayat for village Basirwas.

4. Upon notice, written statement on behalf of respondent Nos. 1 to 4 has been filed stating therein that pursuant to the resolution dated 21.02.2020 (Annexure P-1), Deputy Commissioner, Bhiwani sent back the case to the BDPO, Loharu, vide his letter dated 13.03.2020, to clarify the reason for bifurcation/creation of new Gram Panchayat. The BDPO, Loharu, again submitted the case on 17.03.2020 clarifying that both the villages i.e. Barwas (55) and Basirwas (54) are separate revenue estate having individual Hadbast numbers and both are 5 Kms. away from each other. As far as the application dated 28.02.2020 (Annexure P-6) given by the petitioners is concerned, vide letter dated

29.05.2020 (Annexure R-1) they (petitioners) were informed that as per the Haryana Panchayati Raj Act, 1994, resolution of Gram Panchayat/Gram Sabha was not required for bifurcation/creation of new Gram Panchayat. In special circumstances, the Government can relax the condition of minimum population of 500. Final decision, in this regard, has to be taken by the Government. Application made by the petitioners for not creating a new Gram Panchayat for village Basirwas was signed/thumb marked by only 07 persons. The resolution for bifurcation/creation of new Gram Panchayat in the name of Basirwas was passed unanimously in the meeting of the Gram Sabha, which was held on 21.02.2020 in the presence of residents of both the villages. It is further stated that vide notification dated 10.04.2020, the Government of Haryana had already constituted a committee for looking into the issue of reorganization of Sub-divisions, Tehsils, Blocks, Panchayats and Panchayat Samitis consisting of following members:-

(i) Sh. Dushyant Chautala, Deputy Chief Minister.

(ii) Sh. Kanwar Pal, Education Minister.

(iii) Dr. Banwari Lal, Co-Operation Minister.

5. The aforesaid committee examined the cases of bifurcation/creation of new Gram Panchayats received from the Deputy Commissioner, Bhiwani along with other cases received from separate districts and in its meeting dated 16.12.2020, forwarded its recommendation by giving relaxation of population limit of 500 to the Hon'ble Chief Minister, Haryana, for approval, as per Annexure R-2. After approval, the Government of Haryana, Development & Panchayat Department, vide notification dated 23.02.2021 (Annexure P-7), constituted 107 new Gram Panchayats along with new Gram Panchayat of village Basirwas from the existing Gram Panchayat, Barwas.

6. After the notification dated 23.02.2021 (Annexure P-7), subsequent steps have been taken regarding determination of wards/seats, vide order dated 20.04.2021 (Annexure R-3). It is further stated that Gram Panchayat, Barwas has total 09 seats of Panches, out of which, 04 seats for women, 01 for SC woman, 03 for other than woman and 01 seat for Backward Class other than woman. Gram Panchayat, Basirwas has total 06 seats of Panches, out of which, 02 seats for women, 01 for SC women & 03 seats for other than woman have been reserved by the Sub Divisional Officer (Civil), Loharu, vide order dated 18.06.2021 (Annexure R-4).

7. Heard, counsel for the parties.

8. Facts not in dispute are that as per Section 7 (1) of the Haryana Panchayati Raj Act, 1994, the Government in exceptional cases, can relax the condition of minimum population of 500 in order to create a new Gram Panchayat. In the present case, distance between both the villages i.e. Barwas and Basirwas, is 05 Kms. and both are separate revenue estates having individual Hadbast numbers. Population of village Basirwas is less than 500 and necessary relaxation, in this regard, was given by specially constituted Committee, as is evident from Annexure R-2. The Deputy Commissioner, Bhiwani, vide letter dated 29.05.2020 (Annexure R-1) informed Mr. Rajbir Singh and others, who had raised objections

vide application dated 28.02.2020 (Annexure P-6), that as per Haryana Panchayati Raj Act, 1994, resolution of Gram Sabha was not required for constitution of new Gram Panchayat and in special circumstances, the Government can declare a new Gram Panchayat/Gram Sabha under Section 5 of 8 :: Downloaded on - 23-01-2022 04:48:14 :: CWP-7428-2021 -6-7 (1) of the Act. The final decision, in that regard, was taken by the Government. Hence, necessary relaxation has been granted under Section 7 (1) of the Act by the committee constituted by the Government of Haryana. After this relaxation was granted vide Annexure R-2, official notification was issued on 20.04.2021 (Annexure R-3), whereby villages Barwas and Basirwas have been bifurcated in two separate Gram Panchayats. A perusal of notification dated 20.04.2021 (Annexure R-3) shows that there are total 09 and 06 seats in villages Barwas and Basirwas respectively. Details of the seats have been given in Annexure R-4, which is reproduced as under:-

Sr	Name of Gram	Total Women	Other	than
No.	Panchayat	Wards	Women	
			Unreserved	BC SC
			Unreserved	BC SC

9	Barwas	9 3,5,7,9	0 1 4,6,8	2	0
10	Basirwas	6 2, 5	0 4 1,3,6	0	0

9. Learned State counsel has referred to the judgment passed by the Division Bench of this Court in *Latif vs. State of Haryana and others*, CWP No.15594 of 2015 (decided on 03.09.2015), wherein challenge was made to the notification whereby separate Sabha Area/Gram Panchayat had been created under the Haryana Panchayati Raj Act, 1994. In that case, the Division Bench had held that for the purpose of creation of a new Gram Panchayat, there was no provision for passing a resolution by the existing Gram Panchayat under Section 7 (1) of the Act. Reference was made to the instructions dated 23.03.1999, where there was no suggestion that in the absence of such a resolution, the proposal to constitute a new Gram Panchayat shall not be forwarded. Finally, it was observed that constitution of a new Gram Panchayat was a legislative function to be exercised in 6 of 8 :: Downloaded on - 23-01-2022 04:48:14 :: CWP-7428-2021 -7- public interest to speed up the development and welfare activities. If, a Gram Panchayat, for some reasons does not resolve to its bifurcation, it cannot per se be an impediment against the exercise of powers by the State Government under Section 7 of the Act. The creation of more and more democratic institutions fulfills the legitimate expectations of those who have remained unrepresented for decades. Similarly, smaller geographical units oftenly get expeditious development. A State action in furtherance of such like goals would not call for any interference by a writ Court, unless it is blatant violation of constitutional or statutory

conditions.

10. Learned counsel for the petitioners has not been able to refer any judgment, whereby bifurcation of the Gram Panchayats (which has been carried out by the respondent-State under Section 7 of the aforesaid Act), has been quashed only on the ground that the resolution was not passed by the villagers.

11. In the facts of the present case, as per reply filed by the respondents, a unanimous resolution dated 21.02.2020 (Annexure P-1) was passed for bifurcation of the Gram Panchayats and creation of new Gram Panchayat of village Basirwas. Application/objections dated 28.02.2020 (Annexure P-6) given by Mr. Rajbir and others was also rejected and they were informed vide communication dated 29.05.2020 (Annexure R-1) that the Government can relax the condition of minimum population under Section 7 (1) of the Haryana Panchayati Raj Act, 1994 and resolution of the Gram Panchayat was not necessary. The 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 a Committee constituted by the Government of Haryana. The said Committee, vide Annexure R-2, approved the said resolution by giving relaxation to the condition of minimum population of 500. Thereafter, the Government of Haryana, vide notification dated 23.02.2021 (Annexure P-7), constituted 107 new Gram Panchayats, including that of village Basirwas from the existing Gram Panchayat, Barwas. After the said notification, separate wards/seats were created vide order dated 20.04.2021 (Annexure R-3) and even reservation was done as per Annexure R-4. Meaning thereby, all the relevant provisions under the Haryana Panchayati Raj Act, 1994, have been followed while bifurcating/creating the new Gram Panchayat of village Basirwas. One of the reasons for creating new Gram Panchayat was that both the villages had separate revenue estates and they were situated at a distance of about 5 Kms from each other. It was difficult for the villagers to get the signatures of the Sarpanch on the vital documents.

12. In the light of the above discussion, we find no reason to quash the notification dated 23.02.2021 (Annexure P-7), whereby Gram Panchayat, Barwas, has been bifurcated by carving out a separate Gram Panchayat for village Basirwas.

13. No merits. Dismissed.