

State Of Madhya Pradesh & Ors vs Devilal on 20 December, 1985

Equivalent citations: 1986 AIR 434, 1985 SCR SUPL. (3) 894, AIR 1986 SUPREME COURT 434, 1986 (1) SCC 657, 1985 (2) MCC 105, (1986) JAB LJ 225, (1986) 1 SCJ 143

Author: A.P. Sen

Bench: A.P. Sen, D.P. Madon

PETITIONER:

STATE OF MADHYA PRADESH & ORS.

Vs.

RESPONDENT:

DEVILAL

DATE OF JUDGMENT 20/12/1985

BENCH:

SEN, A.P. (J)

BENCH:

SEN, A.P. (J)

MADON, D.P.

CITATION:

1986 AIR 434

1985 SCR Supl. (3) 894

1986 SCC (1) 657

1985 SCALE (2) 1470

ACT:

Madhya Pradesh Panchayats Act, 1962 - Sections 106, 361 and 370 - Madhya Pradesh Panchayat Election and Co-option Rules, 1963 - Rule 3 - Modification or alteration of the Constituencies of a block once delimited by a Notification u/s 106 after the process of election of members of Janapada Panchayat has started - Powers of the State Government - What are - Affording an opportunity to electorate to raise objection - Whether mandatory and necessary.

HEADNOTE:

After the establishment of Gram Sabhas throughout the State under s.3 of the Madhya Pradesh Panchayats Act, 1962, the State Government in accordance with s.103 divided Mandsaur District into eight blocks with Manasa Block as one of them where a Janapada Panchayat was to be established. Under ss. 105 and 106 of the Act, the State Government by a

notification dated September 26, 1969 divided this Block into twenty constituencies from which the representatives of the Janapada Panchayat, Manasa were to be elected. After the Constituencies were notified, the elections to the Gram Panchayats in the block were completed on November 8, 1970 and duly notified by the Collector on November 14, 1970. On the same day, the new Gram Panchayats assumed office. On November 25, 1970, the State Government published a notification under s. 106 of the Act for a re-distribution of the constituencies of the block. On November 29, 1970, the Collector also issued a notification reallocating the reserved seats for the Scheduled Castes and Scheduled Tribes.

The respondent, Sarpanch of a Gram Sabha, qualified to contest the elections of the President and Vice-President of the Janapada Panchayat, Manasa, filed a petition under Art. 226 challenging the validity of notifications dated November 25, 1970 and November 29, 1970 on the grounds : (1) that the State Government had no statutory power under s. 106 of the Act to alter or modify the constituencies once they had been notified and the process of election had started ; (2) that the issuance of the notification was mala fide and politically motivated with a view to further the prospects of the party in power, and (3) that

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assuming the State Government was empowered to alter or modify the Constituencies of a block during the progress of election to the Janapada Panchayats, the notification for re-distribution of the constituencies was illegal and inoperative as it had been published without affording an opportunity to the electorate to raise any objection.

The appellant State contested the petition contending : (1) that the Gram Panchayats and Janapada Panchayats are two distinct and separate entities, and the Act envisages different procedures for holding independent elections and merely because the Gram Panchayat elections were over it could not be said that a notification modifying the constituencies of the Gram Panchayats could not be issued under s. 106; (2) that the notification seeking to alter the constituencies did not pertain to the Manasa Block alone but to many other blocks in the district and, therefore, the issuance of the notification was not actuated with political motives, and (3) that the provisions of ss. 105 and 106 do not make it obligatory on the part of the State Government to afford an opportunity of raising objections.

The High Court quashed the notifications and held that when the process of election of members to the Janapada Panchayat starts, the State Government had no power to alter or modify the constituencies of a block once delimited by a notification under sub-s. (1) of s. 106.

In the appeal to this Court on behalf of the appellant-State it was contended that the view taken by the High Court was in conflict with its earlier decision in Kalyansingh

Kathor & Ors. v. The State of Madhya Pradesh & Anr., A.I.R. 1974 M.P. 84, wherein it was held that the exercise of the power by the State Government cannot be challenged except on proof of mala fides.

Dismissing the appeal,

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HELD : 1. The notification dated November 25, 1975 issued by the State Government under sub-s.(1) of s. 106 of the Madhya Pradesh Panchayats Act 1962 is in-valid. [908 C]

2. The whole purpose of delimitation of a block into constituencies under sub-s.(1) of s. 106 of the Act is to ensure that every citizen should get a fair representation to the Gram Panchayat and in turn to the Janapada Panchayat and the Zila

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Panchayat. The result of any election under a majority system depends in fact not only on the way people vote but on the way their votes are distributed among the constituencies. It was, therefore, impermissible for the State Government to redistribute the constituencies in the Manasa Block under sub-s.(1) of s. 106. [907 B-C]

3. A close and combined reading of the provisions of the Act make it quite evident that the actual control over the Gram Panchayat in a block is through the Janapada Panchayat for the block and the result of the elections to the Janapada Panchayat would depend upon the nature of the electoral roll prepared for each constituency in a block. If the State Government were to issue a notification under sub-s.(1) of s. 106 for redistribution of the constituencies in a block after the process of election had started, it would necessarily change the whole pattern of voting in the election of members to the Janapada Panchayat. This is plainly a typical case of gerrymandering, which means to arrange elections districts so as to give an unfair advantage to the party in power by means of redistribution act or to manipulate constituencies generally. [905 B-D]

4. Delimitation of the constituencies in a block under sub-s. (1) of s. 106 is connected with the holding of election of members to the Janapada Panchayat and delimitation of such constituencies would arise when there is alteration in the limits of Gram Sabha area under sub-s. (2) of s. 361 of the Act which brings about a change in a block or alteration in the limits of the block under sub-s. (4) of s. 370. Amalgamation, splitting up and alteration in the limits of Gram Sabhas have to be carried out after following the procedure prescribed by ss. 360 and 361. Alteration of the limits of a block can be affected by the State Government after following the procedure prescribed in s.370 of the Act. [905 E-F; 906 B]

In the instant case, there was no alteration either in the limits of the Gram Sabhas area under sub-s. (2) of s. 361 or of the block under sub-s.(4) of s. 370 and, therefore, there was no occasion for the State Government to

issue a fresh notification under sub-s. (1) of s. 106 restructuring the constituencies of the block. The notification issued by the State Government seeking to alter constituencies of the block after the process of election of members to the Janapada Panchayat had started and the notification by the Collector for the reallocation of the reserved seats for the members of the Scheduled Castes and Scheduled Tribes were wholly mala fide and intended and meant to gain control over the Janapada Panchyat. [906 F-H; 907 A]
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5. When there is an alteration in the limits of a Gram Sabha area under sub-s. (2) of s. 361 or in the limits of a block under sub-s. (4) of s. 370, it may be that the State Government would have to issue the requisite notification for delimitation of the constituencies of such altered block under sub-s.(1) of s. 106 of the Act. It is only upon compliance of the mandatory requirements of sub-s. 3 then the State Government can proceed to issue a notification. [906 E-F]

6. It is only upon compliance of the mandatory requirements of sub-s. 3 that the State Government can proceed to issue a notification under sub-s. (4) of s. 370 for the alteration of the limits of a block. This procedure implies the giving of an opportunity to the persons affected. [908 A-B]

In the instant case, there was really no occasion for the State Government to have issued the notification dated November 25, 1970 seeking to restructure the constituencies of the block in the midst of the elections. Even if there was such a power, the State Government was in duty bound to publish the proposal giving an opportunity to the persons affected to raise their objections to the proposed alteration. [908 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2472 of 1972.

From the Judgment and Order dated 4.1.1972 of the Madhya Pradesh High Court in Miscellaneous Petition No. 21 of 1971.

H.K. Puri for the Appellants.

S.K. Dholakia, S.K. Gambhir, Ashok Mahajan and Mrs. Sunita Kriplani for the Respondent.

The Judgment of the Court was delivered by SEN, J. The issue involved in this appeal on certificate from a judgment and order of the Madhya Pradesh High Court dated January 4, 1972 is as to the powers of the State Government under s. 106 of the Madhya Pradesh Panchayats Act, 1962 to

modify or alter the constituencies of a block once delimited by a notification issued thereunder after the process of election of members of the Janapada Panchayat has started; particularly, without affording an opportunity to the electorate to raise any objection. On the question involved, conflicting views have been expressed by two Division Benches of the High Court and the High Court certifies that the question raised is one of frequent occurrence and great importance.

By the judgment under appeal, a Division Bench of the High Court has held that the provisions of the Act do not confer any power on the State Government to modify or alter the constituencies once fixed by a notification issued under sub-s. (1) of s.106 of the Act and fixing the number of members to be elected from each constituency. It accordingly struck down the impugned notification issued by the State Government dated November 25, 1970 under ss. 105 and 106 of the Act purporting to restructure the constituencies of the Manasa Block.

Put very briefly, the essential facts are these. After the establishment of Gram Sabhas throughout the State under s. 3 of the Act, the State Government in accordance with s. 103 divided the Mandsaur District into eight blocks with Manasa Block as one of them where a Janapada Panchayat was to be established. Under ss. 105 and 106 of the Act, the State Government by a notification dated September 26, 1969 divided this Block into twenty constituencies from which the representatives of the Janapada Panchayat, Manasa were to be elected, with one representative to be elected from each constituency. After the constituencies were notified, the elections to the Gram Panchayats in the block were completed on November 8, 1970 and they were duly notified by the Collector, Mandsaur on November 14, 1970. On the same day, the new Gram Panchayat assumed office. On November 25, 1970, the State Government published a notification purporting to be under s. 106 of the Act for a re-distribution of the constituencies of the block. On November 29, 1970, the Collector also issued a notification reallocating the reserved seats for the Scheduled Castes and Scheduled Tribes. The respondent who had been elected as the Sarpanch of the Gram Sabha, Alhed and was thus qualified to contest the elections of the President and Vice-President of the Janapada Panchayat, Manasa, filed a petition in the High Court under Art.226 of the Constitution challenging the validity of the impugned notification dated November 25, 1970 issued by the State Government for re-delimitation of the constituencies of the block and the notification by the Collector dated November 29, 1970 for the reallocation of the reserved seats for the Scheduled Castes and Schedule Tribes. In assailing the validity of the impugned notification dated November 25, 1970, the respondent pleaded, inter alia, that the State Government had not statutory power under s. 106 of the Act to alter or modify the constituencies once the same had been notified and the process of election had started, that the issuance of the impugned notification was mala fide and politically motivated with a view to further the prospects of the party in power and that, even otherwise, assuming that there was such a power in the State Government to alter or modify the constituencies of a block during the progress of election to the Janapada Panchayat, the impugned notification for re- distribution of the constituencies for the Manasa was illegal and inoperative as it had been published without affording an opportunity to the electorate to raise any objection. The respondent, accordingly, sought a writ in the nature of mandamus and other appropriate writs, orders and directions under Art.226 of the Constitution directing the State Government to forebear from giving effect to the impugned notifications.

The appellants contested the writ petition filed by the respondent on various grounds, namely : (1) The Gram Panchayats and Janapada Panchayats are two distinct and separate entities and the Act envisages independent elections to be held for the same. (2) The scheme of the Act provides that the Act prescribes for different procedures for the holding of elections to the Gram Panchayat elections were over on November 14, 1970, it could not be said that a notification modifying the constituencies of the Gram Panchayats could not be issued under s. 106 of the Act. (3) The impugned notification seeking to alter the constituencies did not pertain to the Manasa Block alone but to many other blocks in the district and therefore the allegation that the issuance of the notification was actuated with political motives was wholly without basis. And (4) The provisions contained in ss. 105 and 106 of the Act do not make it obligatory on the part of the State Government to afford an opportunity of raising objections and therefore the State Government was justified in issuing the impugned notification.

On a construction of sub-s. (1) of s. 106 of the Act, a Division Bench of the High Court by the judgment under appeal held that the State Government has no power to alter or modify the constituencies of a block once delimited by a notification issued thereunder. The High Court referred to the scheme of the Act, particularly to s. 103 which contemplates the division of blocks into constituencies. In the context, it observed that looking at the provisions of s. 360 or s. 370 of the Act, it was evident that where the legislature thought fit it had expressly conferred powers on the State Government for altering the limits. It referred to s. 360 of the Act which provides for alteration in the limits of Gram Sabhas and s. 370 which provides for alteration in the limits of the blocks and for the purpose of alteration of such limits both of which also provide for the following of a particular procedure. The High Court observed that on the contrary the provisions contained in s. 106 nowhere contemplate the conferral of any such power on the State Government for alteration of constituencies once fixed and notified under ss. 105 and 106 of the Act. It stated that s. 107 was of no avail as it deals with the constitution of a Janapada Panchayat and does not relate to the delimitation of constituencies as that is specifically provided for in s. 106 of the Act. It then added :

"The only question deserving consideration is, as stated above, about the powers of the State Government to do it. Consequently, as discussed above, there is no provision empowering the State Government to alter the constituencies once prescribed and notified under the provisions of s. 106 of the Act. Therefore, the notification issued by the State Government, published in the Gazette dated 25th November, 1970 is beyond the powers of the State Government and has, therefore, to be quashed."

These observations must, in our opinion, be construed to mean that when the process of election of members to the Janapada Panchayat starts, the State Government has no power to alter or modify the constituencies of a block once delimited by a notification under sub-s. (1) of s. 106 of the Act.

In the appeal, two questions mainly arise, namely : (1) Whether the High Court was right in holding that the provisions of the Act do not contemplate for any amendment of a notification issued earlier under Sub-s. (1) of s. 106 of the Act dividing the block into constituencies or fixing the number of members to be elected from each constituency. And (2) Whether the impugned notification for

re-structuring the constituencies of the Manasa Block was invalid as it had been issued without affording an opportunity to the electoral to raise any objections. We shall deal with the questions in that sequence.

It is urged that the view taken by the High Court was plainly in conflict with the view expressed by an earlier Division Bench in Kalyansingh Rathor & Ors. v. The State of Madhya Pradesh & Anr. A.I.R. 1972 M.P. 84. Bishambhar Dayal, C.J., speaking for the Division Bench, repelled the contention that the State Government had no power to modify or alter the Constituencies in a block once fixed by a notification under s. 106 of the Act and stated :

"Constituencies could not be unchangeable for ever. So far as Sections 360 and 370 are concerned, they relate to an addition to or subtraction from the area of a Gram Sabha or a particular block. The fixation of constituencies is not a matter of adding to or subtracting from a particular Gram Sabha or block. It is a matter of redistribution of a Gram Sabha into constituencies. That may be necessitated by several reasons from time to time e.g. efflux of population from one Gram Sabha to another or an increase or decrease of population at one place or another and so on. The Legislature did not consider it necessary to provide any standard or circumstances under which only such an amendment could be made by the Government. The power to make amendments in the constituencies in the same block was, therefore, left in the discretion of the Government. Since the power has been vested in the Government, it is expected that the Government will exercise that power in a responsible way and only when it is necessary in the circumstances of the case, and will not, merely for the fun of it, start altering constituencies and including Gram Sabha from one constituency in another."

Upon the view that the State Government had the power to alter the constituencies in a block under s. 106 of the Act, as and when, it considered fit, the High Court in Kalyansingh's case held that the exercise of the power by the Government cannot be challenged except on proof of mala fides. In that case, since mala fides were alleged the High Court declined to invalidate a notification issued by the Government purporting to alter the constituencies of a block, and added:

"Since power had been exercised which the Government did possess, it must be assumed that it was for good reasons, although the reasons have not been expressed."

In the present case, however, the High Court has left the question of mala fides untouched.

In order to appreciate the contentions raised, it is necessary to deal with the scheme of the Act as it stood at the relevant time. The Act provides for the formation of a three tier Panchayati Raj. At the basic level, there is a Gram Panchayat for a village or group of villages. S.3 of the Act provides that the State Government may, by notification, establish a Gram Sabha for a village or group of adjoining villages having a population of 1000 or more and shall specify the name by which the Gram Sabha shall be known and the limits of the area within its jurisdiction. For every Gram Sabha there has to be a Gram Panchayat, as enjoined by s.10, constituted in accordance with the provisions

of the Act. S.11 enacts that a Gram Panchayat shall consist of 10 elected members and similar additional members depending upon the population, but not exceeding 20 in all. The second level is constituted by what is known as the Janapada Panchayat. Sub-s.(1) of s.103 provides that the State Government may, by notification, divide a district into blocks. Sub-s.(2) thereof provides that the notification under sub-s.(1) shall specify the name by which the block shall be known and shall define the limits of the area comprised therein. S.104 provides that for every block, there shall be a Janapada Panchayat having jurisdiction over the block. S.105 lays down that every Janapada Panchayat shall consist of such number of members not being less than 15 and no more than 20, as the State Government may, by notification, specify. S.130 directs that subject to general or special orders as may be issued by the State Government, it shall be the duty of a Janapada Panchayat, so far as the Janapada Panchayat fund at its disposal will allow, to make reasonable provision for the matters anumerated therein. S.133 provides that subject to the provisions of the Act and the Rules made thereunder, every Janapada Panchayat shall supervise the working of Gram Panchayats within the block and shall render such assistance within the limits of its resources as may be necessary. At the apex of the three tier panchayat hierarchy, there is a Zila Panchayat. S.166 provides that for every district there shall be established by the State Government, by notification, a Zila Panchayat having jurisdiction over the district. The powers and functions of the Zila Panchayat are described in s.181. Sub- s.(1) of s.181 provides that subject to the provisions of the Act and the Rules framed thereunder, it shall be the duty of the Zila Panchayat to exercise its powers and functions in relation to subjects enumerated therein. Cl.(1) thereof provides that it shall be the duty of the Zila Panchayat to encourage the establishment and foster the development of Gram Panchayats in the district, Cl.(ii) to examine and approve the budget of the Janapada Panchayats in the district, (iii) to distribute the funds allotted to the district by the Central and State Government among the Janapada Panchayats in the district, and cl.(iv) enables the Zila Panchayat to supervise the activities of the Janapada Panchayats.

Under the scheme of the Act, the Gram Panchayats at the base and the Janapada Panchayat at the second tier in a block are both elected bodies. There is however a vital difference in the mode of election to these bodies. The members of a Gram Panchayat are directly elected by the electorate in a Gram Sabha area while those of a Janapada Panchayat for a block are indirectly elected by an electoral college comprising of the Panchas of the Gram Panchayats in such block. The difference in the mode of election is brought out by these provisions. S.12 of the Act lays down that the election and co-option of members of the Gram Panchayats shall be in accordance with the rules made under the Act. In accordance therewith, the State Government framed the Madhya Pradesh Gram Panchayat Election and Co- option Rules, 1963. Chapter II provides for formation of wards and for reservation of seats for members of Scheduled Castes and Scheduled Tribes, Chapter III for preparation of voters' lists, Chapter IV provides for the administrative machinery for the conduct of elections, Chapter V regulates the manner in which elections are to be held, etc. As against this, sub-s.(1) of s.105 provides that every Janapada Panchayat shall consist of such number of members not being less than 15 and not more than 30, as the State Government may, by notification, specify. Sub-s.(2) therefor provides that every Janapada Panchayat shall be composed of

(i) elected members, (ii) one member representing the Municipal Corporation, Municipal Councils and Notified Area Committees within the block elected by the Councillors of such authorities from

amongst themselves and (iii) all members of the State Legislative Assembly returned from constituencies which wholly or partly fall within the block. As already stated sub-s.(1) of s.103 provides that the State Government may, by notification, divide a district into blocks. Sub-s.(2) thereof provides that the notification under sub-s.(1) shall specify the name by which the block shall be known and shall define the limits of the area comprised therein. S.106 of the Act which is relevant for our purposes provides for a division of a block into constituencies and runs thus:

"106. Division of block into constituencies -

(1) Subject to the provision of sub-section(2) the State Government shall by notification -

(a) divide a block into constituencies;

(b) fix the number of members to be elected from each constituency.

(2) The ratio between the number of the members to be elected from each constituency in a block and the population of that constituency as ascertained in the last preceding census, shall so far as practicable, be the same throughout the block,

(3) Where there are members belonging to the Scheduled Castes or Scheduled Tribes residing within the block, such number of seats shall be reserved for the members of Scheduled Castes or Scheduled Tribes on the Janapada Panchayat as shall bear, as nearly as may be, the same proportion to the total member of seats in the Janapada Panchayat as the population of the members of the Scheduled Castes or Scheduled Tribes in the block bears to the total population of such area."

Sub-s.(1) of s.107 provides that for every block there shall be a list of voters which shall be prepared constituency-wise by the Collector or by any other officer authorized by him in that behalf. Sub-s.(2) thereof provides that every Panch of a Gram Panchayat situate within the block shall be entitled to be registered in the list of voters of the block provided that no person shall be entitled to be registered in the list of voters for more than one constituency. Sub-s. (3) provides that every Panch whose name is registered in the list of voters prepared under sub-s.(1) shall be eligible to be an elected member of the Janapada Panchayat. S.109 provides that subject to the provisions of the Act the election and co-option of a member of a Janapada Panchayat shall be in accordance with the rules made under the Act. In accordance therewith, the State Government framed the Madhya Pradesh Janapada Panchayat Election and Co-option Rules 1963. R.3 provides that the Collector or any other officer authorised by him shall subject to the provisions of s.107 cause a voters' list to be prepared for each constituency by including therein the names of the Panchas of the Gram Panchayats situate within the constituencies in a block. As already mentioned, at the apex is the Zila Panchayat in a district which is a statutory body constituted under s.167 comprising of (a) Presidents of Janapada Panchayat within the district, (b) members of the Lok Sabha representing Parliamentary constituencies wholly or partly forming part of the district, (c) members of the Rajya Sabha returned from the State and ordinarily residing in the district, (d) members of the State Legislative Assembly representing Assembly constituencies wholly or partly forming part of the

district, and (e) district officers representing various departments of the State Government.

A close and combined reading of these provisions and the other provisions of the Act which follow hereafter make it quite evident that the actual control over the Gram Panchayat in a block is through the Janapada Panchayat for the block. It would also appear that the result of the elections to the Janapada Panchayat would depend upon the nature of the electoral roll prepared for each constituency in a block. If the State Government were to issue a notification under sub-s.(1) of s.106 of the Act for redistribution of the constituencies in a block after the process of election has started, it would necessarily change the whole pattern of voting in the election of members to the Janapada Panchayat. This is plainly a typical case of gerrymandering. As is well-known, 'gerrymander' is an American expression which has taken root in the English language, meaning to arrange election districts so as to give an unfair advantage to the party in power by means of a redistribution act or to manipulate constituencies generally.

Question of delimitation of constituencies in a block under sub-s.(1) of s.106 of the Act is connected with the holding of election of members to the Janapada Panchayat. Question of delimitation of such constituencies would necessarily arise when there is a alteration in the limits of Gram Sabha area under sub-s.(2) of s.361 of the Act which brings about a change in a block alteration in the limits of the block under sub-s.(4) of s.370. It is not necessary for us to go into details except to refer to certain relevant provisions. Amalgamation, splitting up and alteration in the limits of Gram Sabhas have to be carried out after following the procedure prescribed by ss.360 and 361. S.362 provides that where a notification under s.361 has been issued the State Government may make such consequential orders as it may deem fit in respect of (a) the constitution of the Gram Sabha and the Gram Panchayat for the altered area where a local area has been included in or excluded from a Gram Sabha; (b) for the dissolution of the existing Gram Sabhas which have been amalgamated and the Gram Panchayats or subordinate agencies thereof, as the case may be, and the constitution of the amalgamated Gram Sabha and Gram Panchayat thereafter; (c) the dissolution of the Gram Sabhas split up and the constitution of the Gram Sabhas established in its place and the constitution of the Gram Panchayats thereafter and matters ancillary thereto.

Alteration of the limits of a block can be effected by the State Government after following the procedure prescribed in s.370 of the Act. Sub-s.(1) of s.370 provides that the State Government may by notification, signify its intention to alter the limits of a block by including therein any local area in the vicinity thereof or by excluding therefrom any local area comprised therein. Sub- s.(2) provides that every such notification shall define the limits of the local area which is intended to be included in or excluded from a block. Sub s(3) provides that any inhabitant of the area or areas effected by a notification under sub-s.(1) may, if he objects to anything therein contained, submit his objection in writing to the State Government within 60 days of the publication of the notification and the State Government shall take his objection into consideration. Sub-s.(4) provides that when 60 days from the date of publication of the notification have expired and the State Government has considered and passed orders on such objections as may have been submitted to it within the said period the State Government may, by notification, include the local area or any part thereof in the block or exclude it therefrom. s.371 provides that on the issue of a notification under sub-s.(4) of s.370, the State Government may make such consequential orders as it may deem fit in respect of (i)

the constitution of Janapada Panchayat for the altered area, etc. When there is an alteration in the limits of a Gram Sabha area under sub-s.(2) of s.361 or in the limits of a block under sub-s.(4) of s.370, it may be that the State Government would have to issue the requisite notification for delimitation of the constituencies of such altered block under sub-s.(1) of s.106 of the Act.

In the instant case, there was no alteration either in the limits of the Gram Sabha area under sub-s.(2) of s.361 or of the block under sub-s.(4) of s.370 and therefore no occasion for the State Government to issue a fresh notification under sub-s.(1) of s.106 of the Act purporting to restructure the constituencies of the block. We have no doubt in our mind that the impugned notification dated November 25, 1970 issued by the State Government seeking to alter the constituencies of the blocks after the process of election of members to the Janapada Panchayat had started and that by the Collector dated November 29, 1970 for the reallocation of the reserved seats for the members of Scheduled Castes and Scheduled Tribes were wholly mala fide and intended and meant to gain control over the Janapada Panchayat and were therefore liable to be struck down.

The whole purpose of delimitation of a block into constituencies under sub-s.(1) of s.106 of the Act is to ensure that every citizen should get a fair representation to the Gram Panchayat and in turn to the Janapada Panchayat and the Zila Panchayat. The result of any election under a majority system depends in fact not only on the way people vote but on the way their votes are distributed among the constituencies. It was therefore impermissible for the State Government to redistribute the constituencies in the Manasa Block under sub-s.(1) of s.106 of the Act so as to give an unfair advantage to the party in power to gain control over the Janapada Panchayat and in turn over the Zila Panchayat. This is precisely what has happened in this case as is clear from the narration of facts. Although the High Court has not touched upon this aspect, it is quite apparent that the act of gerrymandering was to manipulate the result of the Janapada Panchayat and thereby materially affect the constitution of the Zila Panchayat.

Turning to the next question, it is necessary to state that the State Government in exercise of the powers under ss.105 and 106 of the Act has issued a composite notification dated August 31, 1965 signifying its intention to divide the Manasa Block into twenty constituencies from which the representatives of the Janapada Panchayat were to be elected and invited objections within 30 days from the date of publication of the said notification. After consideration of the objections raised the State Government by notification dated September 26, 1969 divided the block into twenty constituencies with one representative to be elected from each constituency. As already stated the elections to the Gram Panchayats were held on November 8, 1970 and on November 14, 1970 the Collector notified the result of the elections and the Gram Panchayats assumed office on that date. All of a sudden, while the process of election of members to the Janapada Panchayat was on, the State Government issued the impugned notification dated November 25, 1970 under sub-s.(1) of s.106 of the Act seeking to alter the constituencies of the block. Normally, when the State Government intends to later or modify the limits of a block, it has to follow the procedure laid down in s.370 of the Act. Sub-s.(3) thereof confers a right on the person effected to raise objections in writing to the proposed alteration and casts a duty on the State Government to consider such objections. It is only upon compliance of the mandatory requirements of sub-s.(3) that the State Government can proceed to issue a notification under sub-s.(4) of s.370 for the alteration of the

limits of a block. That is the normal procedure provided which implies the giving of an opportunity to the persons affected. There was really no occasion for the State Government to have issued the impugned notification dated November 25, 1970 seeking to restructure the constituencies of the block in the midst of the election. Even if there was such a power, the State Government was in duty bound to publish the proposal giving an opportunity to the persons affected to raise their objections to the proposed alteration. The impugned notification dated November 25, 1970 issued by the State Government under sub-s.(1) of s.106 of the Act is therefore totally invalid.

The result therefore is that the appeal fails and is dismissed with costs.

A.P.J.

Appeal dismissed.