

## State Of Punjab vs Tehal Singh And Ors on 7 January, 2002

**Equivalent citations:** AIR 2002 SUPREME COURT 533, 2002 (2) SCC 7, 2002 AIR SCW 105, (2002) 5 JT 40 (SC), 2002 (2) SRJ 443, 2002 (5) JT 40, 2002 (1) SCALE 18, 2002 (1) LRI 50, 2002 (1) SLT 84, (2002) 1 ICC 584, (2002) 1 LANDLR 270, (2002) 2 PUN LR 347, (2002) 1 SCJ 177, (2002) 1 SUPREME 7, (2002) 2 RECCIVR 1, (2002) 1 SCALE 18, (2002) 2 CURLJ(CCR) 513

**Author:** V.N. Khare

**Bench:** V.N. Khare, B.N. Agrawal

CASE NO.:

Appeal (civil) 5826 of 1999

PETITIONER:

STATE OF PUNJAB

RESPONDENT:

TEHAL SINGH AND ORS.

DATE OF JUDGMENT: 07/01/2002

BENCH:

V.N. KHARE & B.N. AGRAWAL

JUDGMENT:

JUDGMENT 2002 (1) SCR 27 The Judgment of the Court was delivered by V.N. KHARE, J. There is village called Wazidpur in Block Ghal Khurd in the district of Firozpur, Punjab. For the said village and certain other adjoining areas, Gram Sabha, Wazidpur was constituted and established under Section 4 of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the '1952 Act'). The areas included in the said Gram Sabha were villages Khanpur and Harijan Colony. After 73rd Constitutional amendment Act, 1992 came into force Punjab legislature enacted the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as the Act) in conformity with the provisions of Part IX of the Constitution. After the Act came into force, it appears that the residents of village Khanpur represented to the Government for having an independent Gram Sabha for village Khanpur by including certain portions of area of Gram Sabha, Wazidpur. The Government after making inquiry issued notifications dated 24.10.97 under Sections 3,4 and 10 of the Act respectively. By the said notification, the Government under Section 3 of the Act declared the territorial area of Gram Sabha, Khanpur comprising of abadi portions of village Wazidpur and village Khanpur and Harijan Colony. By another notification of the same date, the Government declared the establishment of Gram Sabha, Khanpur under Section 4 of the Act. The Government also constituted Gram Panchayat for the Gram Sabha, Khanpur. It was at this stage, respondent No. 1, who was Sarpanch of Gram Sabha, Wazidpur and respondent No. 2, who was the Member of the

Gram Panchayat, Wazidpur filed a writ petition under Article 226 of the Constitution challenging the validity of the notifications dated 24.10.97. The contentions raised by the writ petitioners before the High Court inter alia, were that no opportunity of hearing having been afforded before declaring the territorial area of village Khanpur inasmuch as before establishing Gram Sabha, Khanpur, the notifications were invalid; that, the locality Harijan Colony not being contiguous to village Khanpur, the said locality could not have been included in Gram Sabha, Khanpur and, that, the notifications under Sections 3 and 4 of the Act could not have been issued simultaneously and, therefore, the notifications are invalid. The aforesaid contentions advanced by the writ petitioner<sup>^</sup> found favour with the High Court. Consequently, the writ petition was allowed and the impugned notifications dated 24.10.97 to the extent it related to the Gram Sabha, Khanpur were set aside. It is against the said judgment of the High Court, the State of Punjab has preferred this appeal by way of special leave petition.

Learned counsel appearing for the appellant assailed the reasoning given by the High Court and argued that none of the reasons given by the High Court while allowing the writ petitions is tenable in law and, therefore, the judgment under challenge deserves to be set aside.

After hearing learned counsel for the appellant, we are of the view that following questions arise for our consideration in this appeal.

(1) Whether the State Government was required to give an opportunity of hearing to the residents of the area excluded from Gram Sabha, Wazidpur and now included in the Gram Sabha, Khanpur before issuing notifications under Sections 3 and 4 of Act, respectively declaring territorial area of Gram Sabha, Khanpur and establishing Gram Sabha, Khanpur;

(2) whether the notifications under Sections 3 and 4 of the Act could be issued simultaneously; and  
(3) whether the Harijan colony being not contiguous to the village Khanpur could not have, been included in Gram Sabha, Khanpur under Section 3(ii) of the Act.

Coming to the first question, it is necessary to set out the relevant provisions of Sections 3 and 4 of the Act, which are as under:

"3. Establishment of Gram Sabha areas. (1) The State Government may, by notification, declare any village or group of contiguous villages with a population of not less than two hundred to constitute a Gram Sabha area:

Provided that a new Gram Sabha area may be constituted for any village or group of contiguous villages in respect of a separate distinct abadi or group of abadis having a population of not less than two hundred taking into consideration its physical distance from the main village or villages, as the case may be, and other relevant facts:

Provided further that neither the whole nor any part of-

- (a) a Notified Area under Section 241 of the Punjab Act, 1911, or any other Act for the time being in force; or
- (b) a Cantonment; or
- (c) a Municipal of any class; or
- (d) a Municipal Corporation;

shall be included in a Gram Sabha area unless the majority of voters in any Notified Area or Municipality of the Third Class desire the establishment of a Gram Sabha in which case the assets and liabilities, if any of the Notified Area Committee or the Municipal Committee, as the case may be, shall vest in the Gram Panchayat of that Gram Sabha and the Notified Area Committee or the Municipal Committee shall cease to exist.

(2) That State Government may, by notification, include any area in or exclude any area from the Gram Sabha area.

4. Constitution of Gram Sabha. (1) The State Government may, by notification establish a Gram Sabha by name for every area declared as Gram Sabha area under Section 3.

(2) Every person who is entered as voter on the electoral roll prepared by the State Election Commission and for the time being in force pertaining to the area of a Gram Sabha, shall be member of the Gram Sabha"

Before we consider the main question, it is necessary to trace out the nature of power, that the State Government exercises under provisions of Sections 3 and 4 of the Act. The said power could either be legislative, administrative or quasi-judicial.

In *Rameshchandra Kachardas Porwal and Ors. etc. v. State of Maharashtra and Ors. etc.*, [1981] 2 SCC 722, it was held that making of a declaration by notification that certain place shall be principal market yard for a market area under the relevant agricultural produce Market Act was an act legislative in character. In *Union of India and Anr. v. Cynamide India Ltd. and Anr.*, [1987] vol. 2 SCC 720, this Court while making distinction between legislative, administrative and quasi-judicial held thus:

"A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. Legislation in the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases'. It has also been said: "Rule making is normally directed toward the

formulation or requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situation". But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future cause of action. Adjudication is determinative of the past and the present while legislation is indicative of future. The object of the rule, the reach of its application. The rights and obligations arising out of it. Its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help; in drawing the line between legislative and non-legislative acts".

The principles of law that emerge from the aforesaid decisions are-(1) where provisions of a statute provide for the legislative activity, i.e. making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into an action forthwith which provide for certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to a particular situation and (3) lay down future course of actions, the same is generally held to be legislative in character.

Viewed in the light of the statement of law stated hereinbefore, we find that the provisions of Sections 3 and 4 of the Act which provide for declaring territorial area of a Gram Sabha and establishing a Gram Sabha for that area do not concern with the interest of an individual citizen or a particular resident of that area. Declaration contemplated under Sections 3 of the Act relates to an area inhabited by the residents which is sought to be excluded or included in a Gram Sabha. The declaration under Section 3 of the Act by the Government is general in character and not directed to a particular resident of that area. Further, the declarations so made under Sections 3 and 4 of the Act do not operate for the past transactions but for future situations. Under the aforesaid situation, when declarations by issue of notifications by the Government are made under Sections 3 and 4 of the Act respectively, determining the territorial area of a Gram Sabha and establishing a Gram Sabha for that area, such declarations become operative at once. Once declarations are made under Sections 3 and 4 of the Act respectively and thereafter a Gram Panchayat is constituted under Section 10 of the Act, the entire remaining provisions of the Act become operative. On such declarations by a notification in the gazette, the Gram Sabha-a body corporate comes into being with a number of powers and functions conferred upon it under the Act. As soon as a Gram Sabha is established and Gram Panchayat is constituted, they are entrusted with many general functions viz., constructions, repair, and maintenance of community assets, agriculture including agriculture extension, animal husbandry, dairy and poultry, fisheries, social and farm forestry, minor forest produce fuel and fodder, khadi, village and cottage industries, rural housing, rural electrification including distribution of electricity, non-conventional energy source, poverty alleviation programme, education including primary and secondary schools, adult and non-formal education,

promotion of adult literacy, cultural activities, fairs and festivals, public health and family welfare; women and child development, social welfare etc. Further, Gram Sabhas and Gram Panchayats have been conferred numerous other powers and duties enumerated in Section 35 of the Act. Besides that, the Gram Panchayat is entrusted with the judicial functions which are civil and criminal in nature. The power exercisable under Sections 3 and 4 of the Act respectively by the Government was, therefore, not an exercise of a judicial or quasi-judicial function where the very nature of function involves the principle of natural justice or in any case of an administrative function effecting the rights of an individual. We are, therefore, of the view that on making of declaration under Section 3 of the Act determining the territorial area of a Gram Sabha and thereafter establishing a Gram Sabha for that area is an act legislative in character in the context of the provisions of the Act.

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.

Coming to the second question, the High Court had taken a view that since an opportunity of hearing was required to be given before issuing a declaration under Section 3 of the Act, therefore, notifications under Section 3 and 4 could not have been issued simultaneously has to be held erroneous, once we held that no opportunity of hearing was required to be given before issue of declaration under Section 3 of the Act.

So far as the third question is concerned, we have been shown the map of villages Gram Sabha, Wazidpur and Khanpur and on its perusals we find that Harijan Colony although not totally, but partially is contiguous to village Khanpur and, therefore, there was substantial compliance of the provision of sub-section (i) of the Section 3 of the Act, and, therefore, the view taken by the High Court was erroneous.

For the reasons aforesaid, this appeal deserves to be allowed. The judgment under challenge is set aside. The appeal is allowed., there shall be no order as to costs.