

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(P.I.L.) No. 4456 of 2021

1. Sushil Kumar Murmu @ Sushil Murmu S/o Bhagirathi Murmu, aged about 60 years, residents of Village – Sarjamda, Tapudang, P.O. and P.S. – Parsudih, District – East Singhbhum at Jamshedpur
 2. Krishna Hansda S/o Balram Hansda, aged about 48 years, residents of Village – Chholagora, Sarjamda, P.O. and P.S. Parsudih, District – East Singhbhum at Jamshedpur
 3. Lal Mohan Soren S/o Durga Prasad Soren, aged about 50 years, residents of village N. No. 33, Sopodera, P.O. Sopodera, P.S. – Parsudih
- Petitioners

Versus

1. The State of Jharkhand
2. Chief Secretary, Government of Jharkhand, At, P.O. and P.S. – Dhurwa, District Ranchi
3. Chief Electoral Officer, State Election Commission, Jharkhand, at, P.O and P.S. – Dhurwa, District Ranchi

... Respondents

With

W.P.(P.I.L.) No. 49 of 2021

1. Emil Walter Kandulna, aged about 63, S/o Late Juel Kandulna, resident of Banki Kiran Nagar, Banki, P.O. Banki, P.S. Bano, Distt. Simdega, Jharkhand, (Mobile Number 7462909124)
2. Robert Prabhat Minz, aged about 72, son of Late Mathias Minz, resident of Nayatoli Mohalla, P.S. – Lower Bazaar, P.O. – G.P.O. Ranchi, Dist. Ranchi (Mobile Number 8969988301)

... Petitioners

Versus

1. The State of Jharkhand
2. The Chief Secretary, Government of Jharkhand, Project Bhawan, P.O. and P.S. – Dhurwa, District Ranchi, Jharkhand
3. The Chief Electoral Officer, State Election Commission, Jharkhand, 'Nirvachan Bhawan' New Market Chowk, Ratu Road, P.O. G.P.O., P.S. – Kotwali, Ranchi - 834001

... Respondents

With

W.P.(P.I.L.) No. 1589 of 2021

1. Adiwashi Buddhijivi Manch, officiating at Ranchi through its President Sri Safaniel Besra, aged about 64 years, S/o Late Manjhi Besra, R/o Brindaban Taljhari, P.O. – Brindaban, P.S. – Tinpahar, District – Sahebganj.
2. Etwa Munda, aged about 66 years, s/o Late Pandeya Munda, R/o Pancham Nagar, Pipar Toli, P.O. , P.S. – Pundag, District Ranchi
3. Ram Kumar Pahariya, aged about 61 years, S/o Late Besga Pahariya, R/o House no. 53, Chhotabaskopahar, Chhota Basko Pahar P.O., P.S. – Amrapara, District Pakur.

4. Kalus Bhengra, aged about 54 years, S/o Late agnesh Bhengra, R/o Village – Bichna, P.O. – Bichna, P.S. Murhu, District Khunti
5. Somey Oraon, aged about 70 years, S/o Late Shani Oraon, R/o Sarna Toli, Ward No. 13, P.O., P.S. – Sarna Toli, District Loherdaga
6. Damodar Sinku, aged about 61 years, S/o Late Binu Singh Sinku, R/o Harihar Singh Road, Behind Muslim Kabristan Morabadi, P.O. – Ranchi University, P.S. – Misirgonda and District Ranchi

... Petitioners

Versus

1. The Union of India through Ministry of Rural Development having its office at Krishi Bhavan, Dr. Rajendra Prasad Road, P.O. and P.S. – Krishi Bhavan S.O., Distt – Central Delhi (New Delhi), Pin - 110001
2. The Scretary, Ministry of Tribal Affairs having its office at Ground Floor D Wing, Shastri Bhawan, P.O. and P.S. Shastri Bhawan S.O. and Distt – Central Delhi (New Delhi), Pin – 110001.
3. The Chief Secretary, Government of Jharkhand having its office at Project Bhawan, P.O. and P.S. Dhurwa and Distt. Ranchi
4. The Principal Secretary, Department of Rural Development, Government of Jharkhand having its office at Project Bhawan, P.O. and P.S. Dhurwa and Distt. Ranchi
5. The Secretary, Ministry of Rural Development having its office at F.F.P. Building, P.O. and P.S. Dhurwa and Distt. Ranchi
6. The Principal Secretary, Department of Panchayat Raj, Government of Jharkhand having its office at F.F.P. Building, P.O. and P.S. Dhurwa and Distt. Ranchi
7. The Principal Secretary, Department of Law (Justice), Government of Jharkhand having its office at 2nd Floor, Project Bhawan, P.O. and P.S. Dhurwa and Distt. Ranchi
8. The Principal Secretary, Department of Welfare, Government of Jharkhand having its office at 2nd Floor, Project Bhawan, P.O. and P.S. Dhurwa and Distt. Ranchi
9. The State Election Commission, Jharkhand, having its office at Nirvachan Bhawan, New Market Chowk, P.O. and P.S. Ratu Road and Distt. Ranchi
10. The Deputy Commissioner, Ranchi having its office at Block – A, DC office, P.S. and P.O. – Kutchery Road and Distt Ranchi.
11. The Deputy Commissioner, Lohardaga having its office at First Floor, Collectorate Office, P.O. and P.S. – Collectorate Office and Distt. Lohardaga
12. The Deputy Commissioner, Gumla having its office at Collectorate Building, P.O. and P.S. Collectorate Building and Distt. Gumla.
13. The Deputy Commissioner, Simdega having its office at Block – A, Collectorate Building, P.O. and P.S. Collectorate Building and Distt. Simdega
14. The Deputy Commissioner, Latehar having its office at First Floor, Collectorate Building, P.O. and P.S Collectorate Building and Distt – Latehar

15. The Deputy Commissioner, East Singhbhum having its office at Deputy Commissioner, P.O. and P.S. – Sakchi and Distt – Jamsedpur, East-Singhbhum
16. The Deputy Commissioner, West Singhbhum having its office at District Collectorate Building, P.O. and P.S. – Chaibasa and Distt. – Chaibasa, West-Singhbhum.
17. The Deputy Commissioner, Seraikela-Kharsawan having its office at 1st Floor Gourangdih, and Distt. Seraikela-Kharsawan
18. The Deputy Commissioner, Sahibganj having its office at Collectorate Building, P.O. and P.S. Sahibganj and Distt. Sahibganj
19. The Deputy Commissioner, Dumka having its office at New Collectorate Building, P.O. and P.S. – Dumka and Distt. Dumka.
20. The Deputy Commissioner, Pakur having its office at New Collectorate Building, P.O. and P.S. Pakur and District Pakur
21. The Deputy Commissioner, Jamtara having its office at DC office, P.S. and P.S. Jamtara and Distt Jamtara
22. The Deputy Commissioner, Palamu having its office at District Collectorate Building, P.O. and P.S. Mendininagar and Distt. Palamu.
23. The Deputy Commissioner, Palamu having its office at Collectorate Building, P. O. and P.S. Garhwa and Distt Garhwa
24. The Deputy Commissioner, Godda having its office at Collectorate Godda, P.O. and P.S. Godda and Distt. – Godda.

... Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Petitioners	: Mr. Jitesh Kumar, Advocate : Mr. Robert Prabhat Minz, In person : Mr. Ajit Kumar, Sr. Advocate : Ms. Tanya Singh, Advocate
For the UOI	: Mr. Prashant Pallav, DSGI : Mr. Bajrang Kumar, AC to DSGI
For the Res. State	: Mrs. Vandana Singh, Sr. SC – III : Mrs. Chaitali C. Sinha, AC to AAG I- A
For the EC	: Ms. Shruti Shekhar, AC to Sumeet Gadodia, Adv.

Order No. 12/Dated 29th July, 2024

1. The instant writ petitions have been filed by way of pro bono publico for the similar cause of action and are being disposed of by this common order.
2. The relief sought for in present petition is as follows: -

(i) The petitioners most humbly and respectfully pray for issuance of direction upon the respondents for not conducting of Panchayat election in schedule Area of the State of Jharkhand till amendment of the Jharkhand Panchayat Raj Act, 2001 and for issuance of direction upon the respondents authority for granting more empowerment as well fund to the Gram Sabha of the schedule area of State of Jharkhand in view of Panchayats (Extension to the Schedule Areas) Act, 1996 in true spirit by way of issuance of Notification Prescribing the Rules under the Panchayats (Extension to the Schedule Areas) Act, 1996 so that the Gram Sabha can work properly for developing of their village as well the villagers

(ii) To keep in abeyance the further proceeding of conducting of Panchayat Election 2021-22 during pendency of instant writ application.

3. These petitions were heard on several dates.

4. It is evident from the order dated 04th February, 2022 that the matter was heard at length and this Court while taking into consideration the underlying objective behind 73rd Amendment, of Constitution had passed the following order, which is being referred as under:-

“1. With the consent of the parties, the matter has been taken up through conferencing. They have no complaint whatsoever regarding audio and/or video quality.

2. The matter has been heard at length.

3. In the writ petition being W.P.(PIL) No.49 of 2021 apart from the other prayers, the validity of the Panchayati Raj Act, 2001 has also been questioned. In writ petition being W.P.(PIL) No. 1589 of 2021, the prayer has been made for issuance of a direction upon the State to strictly follow the mandate of the PESA Act, 1996 since the Panchayati Raj Act, 2001 has not been enacted strictly in terms of the PESA Act, 1996.

4. The party in-person, namely, Emil Walter Kandulna in W.P.(PIL) No.49 of 2021 has submitted that the State of

Jharkhand is not following the mandate of the 73rd Amendment of the Constitution of India. According to him, the 73rd Amendment has been enacted in the Constitution of India to empower the local self-government/local bodies for the purpose of democratic decentralization of power and resources from the Centre to elected representatives at lower levels in order to allow individuals to participate more directly in governance.

5. Mr. Ajit Kumar, learned senior counsel appearing in W.P.(PIL) No. 1589 of 2021 has submitted that the Panchayati Raj Act, 2001 cannot be said to be in consonance with the PESA Act, 1996 since the Panchayati Raj Act, 2001 has not been enacted in terms of Section 4 of the PESA Act, 1996.

6. Mr. P.A.S. Pati, learned counsel appearing for the State of Jharkhand has submitted that so far as the validity of the Panchayati Raj Act, 2001 is concerned, which has been questioned on the ground of legislative competency of the State of Jharkhand, is having no substance, reason being that the Panchayati Raj Act has been extended in the Schedule Areas in view of the provision of Article 243-M4(b) of the Constitution of India. The Parliament has come out with PESA Act, 1996 in view of the provision conferred under Article 243-M4(b) of the Constitution of India and thereafter, the Panchayaty Raj Act, 2001 has been enacted.

He further submits, refuting the submission made on behalf of the learned counsel for the petitioner and the party in-person, that it is incorrect to say that the Panchayati Raj Act, 2001 is in the teeth of Section 4 of the PESA Act, 1996. The State has taken the plea in the counter affidavit by referring to the different Acts which according to the State of Jharkhand will be considered to be compliance of the provisions of Section 4 of the PESA Act, 1996.

7. In response to such submission advanced on behalf of the State of Jharkhand, Mr. Ajit Kumar, learned senior counsel for the petitioner in W.P.(PIL) No.1589 of 2021 has submitted that since the State has come out with different statutes which cannot be said to be compliance of the mandate of the PESA Act, 1996 as under Section 4 thereof, rather, the Panchayati Raj Act, has been extended in the Scheduled Areas in view of the provision of PESA Act, 1996, therefore, it is incumbent upon the State of Jharkhand to come out with a specific rules in consonance with the provision of Section 4 of PESA Act, 1996.

He further submits that the State has prepared a Draft Rule in the year 2019. He submits that even the committee of the Legislative Assembly has focused on enactment of the Rules in terms of the PESA Act, 1996. He has further referred to a

communication of the concerned Ministry of the Union Government asking the State Government to make out a rule in this regard. He has also referred to the different rules which have been enacted by the different States, like, Gujarat, Himachal Pradesh, etc. But as yet, Rule has not been enacted.

8. This Court, having heard the learned counsel for the parties and considering the aforesaid submission as well as the materials available on record, deem it fit and proper to refer the main objective of the 73rd Amendment of the Constitution of India which was for decentralization of power and resources from the Centre to elected representatives at lower levels in order to allow individuals to participate more directly in governance. The further purpose is requiring the State to organize village Panchayats and grant them necessary power in authority to enable them to function as units of self-government. The 73rd Amendment envisages the Gram Sabha as the foundation of the Panchayat Raj system to perform functions and powers at the local level in order to provide Three Tier Panchayati Raj system at the village, intermediate and district levels.

9. In view of the aforesaid underlying objective behind 73rd Amendment, this Court, before passing appropriate order requires the State Government to explain the following queries:

(i) The State of Jharkhand is directed to explain as to why the Draft Rules which has been framed in the year 2019 has not yet been finalized, when, two departments namely, Land Reforms & Registration and Home and Prison Department have already approved the said Draft and even there are correspondences by the concerned Ministry of the Union Government and report of the Legislative Assembly.

(ii) The State of Jharkhand is to explain as to how the provisions of different statutes can be merged with the provisions of Panchayati Raj Act when there is a specific amendment by way of 73rd Amendment in the Constitution of India for the sole purpose of decentralization of power and resources from the Centre to elected representatives at lower levels in order to allow individuals to participate more directly in governance.

(iii) The State of Jharkhand is directed to explain as to why no reference has been made while auctioning the Balughats of taking permission from the concerned Gram Sabha.

(iv) The State of Jharkhand is directed to bring on record few models of Panchayats working in different villages.

(v) The State of Jharkhand is directed to bring on record the documents, wherein, the Gram Panchayats have taken

decision in granting lease/licence for mining (minor) and sand ghats.

(vi) The State of Jharkhand is directed to bring on record the decision taken by any of the Gram Panchayats across the State pertaining to development schemes.

(vii) The State of Jharkhand is further directed to give reply, para-wise, to all the affidavits filed on behalf of the petitioner (in both the cases).

10. Let the said affidavit be filed on or before the next date of hearing.

11. Let these cases on 25.02.2022.”

5. It is evident from the aforesaid order that this Court had put certain queries by making reference of the underlying object of amendment being carried out by way of 73rd amendment, in the Constitution of India.

6. The matter, thereafter, was heard on various dates.

7. The common order was passed in all the Public Interest Litigations on 03.10.2023 by the Co-ordinate Bench, wherein, following order was passed: -

“It is submitted by Mr. Emil Walter Kandulna, petitioner No. 1 in WP(PIL) No. 49 of 2021, that in pursuance of order passed on 22.08.2023, he has already submitted his representation/objections to the proposed amendment to the concerned Secretary of the State of Jharkhand and they appeared before the Secretary on 29th September, 2023 and on that day the discussion could not be completed and they have been asked to remain present on 04th of October, 2023.

Let the petitioners pursue the avenue of resolving the problem in this matter.

List these cases on 28th November, 2023.”

8. Thereafter, vide order dated 28.11.2023 the Co-ordinate Bench was passed direction upon the respondents to file an appropriate affidavit within three weeks attaching a copy of the

reasoned order disposing the representation of the petitioners after serving a copy on all the parties in this case or their learned counsel. For ready reference the order dated 28.11.2023 is being quoted as under:

“ It is brought to our notice that our order dated 03.10.2023 has been complied by the concerned Secretary of the State of Jharkhand. However, the party in person, Mr. Kandulna has received, but Adiwashi Buddhijivi Manch has not received a copy thereof.

Learned senior counsel, Mr. Ajit Kumar, would also submit that if such a decision has been taken, then the same shall be brought to the notice of the Court by filing an appropriate affidavit.

Let an appropriate affidavit be filed within three weeks attaching a copy of the reasoned order disposing the representation of the petitioners after serving a copy on all the parties in this case or their learned counsel.

List these cases in the second week of January, 2024 without treating the same to be part heard.”

9. It has been submitted by party-in-person in W.P.(PIL) No. 49 of 2021 and the learned senior counsel appearing for the petitioners in W.P.(PIL) No. 1589 of 2021 that the objection so filed against the draft publication has been rejected on 24.11.2023.

10. The learned counsel for the petitioners, by making reference of the underlying object of the 73rd Amendment of the Constitution of India by which the purpose was to give autonomy to the third tier of the governance by strengthening the provision of Panchayati Raj Act, has submitted that the authority although has rejected the objection but while rejecting the objection, the thoughtful consideration has not been given with respect to the

effective implementation of the very object of the 73rd Amendment *vis-a-vis* the Panchayat Extension to Scheduled Areas (PESA) Act, 1996.

11. The further contention has been raised that the State of Jharkhand has been created on 15.11.2000, i.e., particularly for the welfare of the local people of the scheduled who are to be governed under the provision of the Panchayati Raj Acts for all purposes either it is the consent of the local people to be represented in the Panchayat in mining activities or in any other activities so that their interest be taken care of for overall the developments of the local people who are living in the respective Panchayats.

12. Prior to creation of the State of Jharkhand, the Panchayat Extension to Scheduled Areas (PESA) Act, 1996 was already in operation but even then, after creation of State of Jharkhand, the Panchayati Raj Act has been brought into being in the year 2001 but that cannot be said to be in consonance with the provision of Panchayat Extension to Scheduled Areas (PESA) Act, 1996 and that is the reason, these writ petitions have been filed by way of *pro bono publico*.

13. It has further been submitted that the objection to the draft has been rejected on 24.11.2023 and since then about eight months has elapsed, still the Rule has not taken its final shape. It

has further been submitted that non-framing of the Rule even after deciding the objection is not understandable, rather, it is best known to the State-respondents that why, as yet the Rule has not been brought into being.

14. However, Mr. Jitesh Kumar, learned counsel appearing in W.P.(PIL) No. 4456 of 2021, has submitted that the litigants in this Public Interest Litigation is fully satisfied with the reasons given by the competent authority while dealing with the objection.

15. It has been submitted by him that in that view of the matter, it is nothing to say by making any comment upon the propriety of the objection of the draft which has been dealt with by the competent authority.

16. However, the party-in-person, namely, Robert Prabhat Minz who is appearing in W.P.(PIL) No. 49 of 2021 and Mr. Ajit Kumar, learned Senior Counsel assisted by Ms. Tanya Singh, Advocate, has submitted that dealing of the objection of the draft cannot be said to be in consonance with the underlying object of the Constitutional Mandate of 73rd Amendment and, therefore, is contrary to the preamble and object of Panchayat Extension to Scheduled Areas (PESA) Act, 1996.

17. But the learned State Counsel has submitted that the draft since has been dealt with, now the Rule is to be framed and will be notified, therefore, at this stage, since the Rule is still to be notified

by way of proper enactment, hence, no consideration will be said to be proper so far as the objection of the draft publication is concerned.

18. This Court has heard the learned counsel for the parties and in an agreement with the submission made on behalf of the learned State Counsel that since the Rule making power is upon the State and unless the Rule will be framed then, only the constitutional Court in exercise of power conferred under Article 226 or 32 of the Constitution of India is having power to look into the constitutional validity of the said Rule under the power of judicial review.

But that stage has not yet come and as such this Court is not making any remark upon the merit of the objection made on behalf of the parties with respect to the draft publication of the rule, at this stage.

19. However, as has been submitted on behalf of the learned counsel for the writ petitioners that non-enactment of the rule even after creation of the State of Jharkhand way back on 15.11.2000 and the Panchayat Extension to Scheduled Areas (PESA) Act, 1996 are serious concern. Further, the objection has also been dealt with on 24.11.2023 but still the Rule has not been notified.

20. It requires to refer herein that originally; Draft rule was prepared sometime in the year 2019 and when there was no progress in the enactment of the Rule, then these writ petitions have been filed.

It further needs to refer herein that on the basis of the judicial order passed by this Court, the objection has been invited and that has been dealt with by passing final order on 24.11.2023.

21. This Court is conscious of the fact that the High Court in exercise of power conferred under Article 226 of the Constitution of India cannot direct the State for enactment of a legislation. But equally, in the facts and circumstances of the present case, the constitutional mandate by way of 73rd amendment has come and based upon those certain provisions under Article 243 of the Constitution of India has been inserted, having the different provisions therein, one of the provisions is for the enactment of the rule governing the issue of Panchayat, but the rule has not been framed till date although the PESA Act has already been enacted in the year 1996.

The question is that when the PESA Act has already enacted in the year 1996, then how the said Act will be given effect to in absence of any rule which is to be framed under the parent Act, i.e., PESA Act, 1996.

22. This Court, therefore, is of the view that based upon the aforesaid consideration, a direction is required to be issued to the State so as to achieve the constitutional mandate.

23. In the aforesaid fact and circumstances, this Court is of the view that when the Constitution has made out a constitutional mandate by making amendment as 73rd Amendment inserting certain provisions under Article 243 of the Constitution of India then, not enacting the Rule, in terms of the mandate of the 73rd amendment of the Constitution of India, the same cannot be said to be proper on the part of the State.

24. This Court, therefore, is of the view that it is a fit case where a mandamus is required to be issued so as to achieve the object of the constitutional mandate as contained under Article 73rd Amendment of the Constitution of India directing the State to come out with the Rule.

25. Let the rule be enacted preferably within the period of two months from the date of receipt of the copy of this order.

26. Before parting to the order, it needs to refer herein that since learned counsel for the petitioner of the W.P.(PIL) No. 4456 of 2021 has submitted that he has satisfied with the reasons order while dealing with the objection and as such, the observation which has been made by taking note of the fact that the party-in-person in W.P.(PIL) No. 49 of 2021 and the learned senior counsel

who is representing the writ petition being W.P.(PIL) No. 1589 of 2021 will have liberty to challenge the proposed rule but the same will not be available to petitioner of the W.P.(PIL) No. 4456 of 2021.

27. Accordingly, all these writ petitions stand disposed of.

28. Pending Interlocutory applications, if any, also stands disposed of.

(Sujit Narayan Prasad, A.C.J.)

(Arun Kumar Rai, J.)

Umesh/-A.F.R.