
(1994) 07 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 39298 of 1993

1janab A. Rizwanulla Shariff @ Gauver	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 27-07-1994

Acts Referred:

Constitution of India, 1950 — Article 245
Karnataka Panchayat Raj Act, 1993 — Section 4

Citation : (1994) 3 KarLJ 240

Hon'ble Judges : S. Rajendra Babu, J

Judgement

1. Over three hundred matters have been listed for hearing alongwith this petition. So far as the general points arising in the cases are concerned, all the matters have been heard together. For the purpose of convenience, all the contentions are referred to and dealt with in this writ petition.

2. In this writ petition filed under Article 226 of the Constitution of India, petitioner is raising certain questions as to the scope of Section 4 of the Karnataka Panchayat Raj Act, 1993 (hereinafter referred to as the "Act") and the manner of exercise of powers thereto and limitation, in addition to challenging the validity of the said provision itself. Petitioner also calls in question the validity of the notification issued under Section 4(1) of the Act and the order made under Section 4(3) of the Act affirming the action proposed by the Deputy Commissioner under Section 4(1) of the Act.

3. In challenging the constitutional validity of Section 4 of the Act, two grounds are urged-firstly that it does not provide for principles of natural justice being observed and, secondly, the power is delegated to an authority without sufficient guidelines. These questions raised in this petition are already settled by the Supreme Court in more than one decision. So far as the question of excessive delegation is concerned, the Supreme Court in Ayodhya Prasad Vajpai v State of Uttar Pradesh and Another, AIR 1968 SC 1344, has considered this aspect. That was a matter arising under the Uttar Pradesh Kshettra Samithis and Zilla

Parishads Adhiniyam. It was noticed therein that in ascertaining whether there are adequate safeguards or guidelines under the Act, the underlying policy and the objective of the legislation has to be taken note of. When such policy is set out in the enactment itself and if details are left to the State Government to determine what areas should be and how many Kshettra Samithis should be constituted in each District would not be a matter for the Legislature to prescribe, but it would be a matter of detailed legislation because it is pre-eminently a matter which can be left to the determination of the Executive which is to act in conformity with the wishes of the local people, the political exigency of the situation and the requirements of the administrative control. In the present Act, in Section 4 it is provided that subject to general or special orders of the Government, the Deputy Commissioner, if, finds it expedient to declare any area comprising a village or group of villages having a population of not less than five thousand and not more than seven thousand to be a panchayat area, may, after previous publication, declare such area as a panchayat area for the purposes of this Act and also specify its headquarter. Thereafter two provisos are set forth in relation to certain districts where the population may be less than what is prescribed in sub-section (1), but not less than 2500 and it is also stated thereto in the next proviso that an area within a radius of five kilometers from the centre of a village could be declared as a panchayat area. It is further provided that the Deputy Commissioner, may, with the previous permission of the Government declare any area comprising a village or group of villages having a population of either less than five thousand or more than seven thousand to be a panchayat area. This Court had occasion to consider as to what is the criteria or the test that will have to be taken note of in exercise of the powers under Section 4 of the Act which is akin to Section 4 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats, Act in *Bhadre Gowda v State of Karnataka*, 1987(1) Kar. L.J. Sh. N. 74. If these aspects are borne in mind, it cannot be said that there is any excessive delegation and that the said provisions lack any guidelines. So far as the observance of principles of natural justice is concerned, there is an obligation upon the Deputy Commissioner before he declares an area to be a panchayat area to notify the same. Whenever a condition for previous publication is made, necessarily the authority concerned will have to receive objections to the draft notification and consider the same and thereafter decide the matter. That is sufficient compliance with the provisions of principles of natural justice. There is no obligation on the State to give individual notices to the residents in that area and thereafter determine the matter. Further, against the declaration so made, a revision lies to the Commissioner who has to give a reasonable opportunity of being heard to the concerned person such as the applicant or the grama panchayat and decide the matter. Therefore, there is complete safeguard so far as the observance of principles of natural justice is concerned. In that view of the matter, I do not think any point is made by the petitioner in support of the contentions urged to invalidate the provisions of Section 4 of the Act.

4. It is next contended that in the scheme of the Act, a village is defined in Section 2(42) of the Act as meaning a village specified by the Governor by public notification to be a village for the purposes of the Act and includes a group of villages so specified. This is identical with Article 243(g) of the Constitution. It is however, contended that the notification issued by the Governor merely specifies a revenue village as a village for the purpose of the said Act and therefore does not constitute specification of a village as contemplated under Section 2(42) of the Act. It is submitted that the village has got to be specifically mentioned and not in general terms because what is required under Section 2(42) is specification of a village and not generally to specify villages. This argument ignores the language adopted by the Legislature. Village is defined to mean a village specified by the Governor by public notification and there is no other condition attached thereto. All that is required by the Governor is to make a notification as to what would constitute a village for the purpose of the Act. It is not necessary for the Governor to state whether each one of the villages is a village for the purpose of the Act or which of these villages would be a village for the purpose of the Act. It is also not possible for the Governor to refer to village or group of villages which are revenue villages as village for the purpose of this Act. Hence, I find no merit in this contention either.

5. It is next contended that in order to understand the scope of expression "village" we have to read Section 4 of the Act and if read together, the Governor has not taken note of the provisions of Section 4 of the Act in making a notification under Section 2(42) of the Act. This argument is plainly untenable. What is contemplated in Section 2(42) is the definition of a "village" for the purpose of the Act. What is dealt with in Section 4 of the Act is the constitution of a panchayat area and not a village and a panchayat area consists of a village or group of villages. Hence this contention is also rejected.

6. As to the scope of Section 4 of the Act, it is urged now that certain guidelines have been issued by the Government on 24-4-1993. It is contended that these guidelines have not been borne in mind by any of the authorities in applying the said provision for declaration of an area as a panchayat area or Grama Panchayat. An identical question came up for consideration before the Supreme Court in *J.R. Raghupathy v State of Andhra Pradesh and Others*, AIR 1988 SC 1681. The Supreme Court noticed that the guidelines issued in the Andhra Pradesh Districts (Formation) Act to be in the nature of administrative instructions not traceable to any legislative provision. They were issued by the State Government regulating the manner in which the authorities should formulate the proposal for formation of a revenue mandal or for location of its headquarters keeping in view the broad guidelines. The guidelines have no statutory force and they were mere departmental instructions made for the officers. The ultimate decision as to formation of a revenue mandal or location of its headquarters was with the Government and it was for that purpose the Government issued preliminary notification inviting objections to the same. It is no doubt true that the executive instructions issued have no legal force nor they

could be enforced in a court of law. But, nevertheless the same cannot be brushed aside by the concerned officers. The principles laid down therein in fact expound the law by the Government itself. If that is so, the authorities should take note of the instructions given by the Government. The learned Government Pleader appearing for the State categorically stated that in no case guidelines have been deviated. Therefore at this stage it may not be necessary for me to examine that aspect of the matter.

7. It is stated that no blanket power has been given to the Deputy Commissioner to constitute a panchayat area or establish a Grama Panchayat or specify its headquarters. He has to take note of the population which in the present case is between 5000 to 7000 and in certain cases it may come down that figure but not less than 2500 and in certain other cases which are of special nature, irrespective of the population depending upon the distance from the centre of that village, and only thereafter an area could be declared as a panchayat area. It is also urged that the Deputy Commissioner could with the previous permission of the Government, declare any area comprising a village or group of villages having a population of either less than five thousand or more than seven thousand to be a panchayat area. It is also stated that in doing so, the authority will have to bear in mind the infrastructure available in the area; the distance from the headquarters to be located, so on and so forth. It is no doubt true that those are the guidelines provided in the Act and this Court in Bhadre Gowda's case, *supra*, considered these to be the exact requirements in locating the headquarters. The learned Government Pleader did not join issue on this aspect of the matter.

8. It is urged that the Divisional Commissioner in dealing a revision petition has got to hear the parties. He has got to comply with the provisions of sub-section (1) of Section 4 of the Act in the event he does not agree with the view taken by the Deputy Commissioner and declares another village to be the headquarter other than the one which had been declared by the Deputy Commissioner. Countering these submissions, it is urged on behalf of the State and by some of the learned counsel appearing in the cases listed before me that the power of revision is very wide, except that he may substitute his own view to that of the Deputy Commissioner. On the material available he could come to a different conclusion, though not resulting in re-appreciating the evidence or material on record and therefore it was not necessary for him to go through the exercise once over again under Section 4(1) of the Act and such an exercise may become necessary when he makes a modification as provided in the third proviso to sub-section (1) of Section 4 of the Act.

9. A careful perusal of the provision would show that the Deputy Commissioner under Section 4(1) of the Act can declare a panchayat area or establish a Grama Panchayat after previous publication being made and the Deputy Commissioner may also at the request of the Grama Panchayat concerned or otherwise after previous publication, increase the area of any panchayat or diminish the area of

any panchayat area or alter the headquarters or alter the name of any panchayat area or declare an area to cease to be an area. If any power is exercised under any of these two parts, that would be the subject-matter of revision under sub-section (3) of Section 4 of the Act. The Divisional Commissioner has to hear the applicant or the Grama Panchayat concerned before passing any order thereto. The powers of the Divisional Commissioner are to revise the orders of the Deputy Commissioner made under sub-sections (1) or (2) or modify the same as provided under third proviso to sub-section (1). Inasmuch as the parties concerned viz., those who were aggrieved either individual or Grama Panchayat, are heard in the matter before making any revision, I find it difficult to accept the argument that the Divisional Commissioner has to undergo the same procedure as prescribed in Section 4(1) of the Act because there was already a proposal made by the Deputy Commissioner and thereafter a notification issued by him after following the procedure prescribed under that provision and the Divisional Commissioner is sitting in revision thereto. In doing so, it cannot be said that he has only powers to demolish the orders made by the Deputy Commissioner and he cannot alter the same. If there is sufficient material before him and for good reasons he may do so subject to the limitations of powers of revision such as not substituting his own opinion to that of the Deputy Commissioner which is equally cogent or when the Deputy Commissioner has reached such a conclusion on the material on record which is a plausible conclusion. Read that way, I do not think the powers of revision are limited in any manner as contended for the petitioners.

10. Some of the learned counsel appearing in the cases listed before me urged that there was an enactment known as Mysore Village Panchayats and Local Boards Act in force in the State preceding the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 and in each of those enactments Panchayats had been constituted and reconstituted. Therefore, the power that could be exercised under the Act is only under Section 4(2) of the Act and not under Section 4(1) of the Act. This argument ignores the effect of the provisions arising under Section 318 of the Act by which Karnataka Act 20 of 1985 stood repealed. It is only the previous operations of the Act that was saved and not further. Therefore after the Karnataka Panchayat Raj Act came into force, for the first time there is a declaration of panchayat area and establishment of Grama Panchayats and hence reliance placed by the learned counsel on the decisions in *Hassan Sab Homiddin Sab Kallimani v State of Mysore and Others*, 1966(2) Mys. L.J. 340, *The Village Panchayat, Amruthi v Divisional Commissioner, Mysore Division*, 1968(2) Mys. L.J. 217 and *Yashoda v Durgoji*, 1975(1) Kar. L.J. Sh. N. 111, is therefore misconceived. In each of those decisions, panchayat area was sought to be modified after the Act came into force such panchayat had been constituted earlier. There is another reason as to why the argument raised by the learned counsel for the petitioner in this regard cannot be accepted. In *B.N. Shankarappa v Uthanur Srinivas and Others*, AIR 1992 SC 836, the Supreme Court noticed that the power to declare an area as a

mandal, if read with Section 14 of the General Clauses Act empowers the concerned Deputy Commissioner to alter the name of any mandal or to increase or decrease any area after previous publication of the proposal by notification, if so required. Therefore, even assuming for a moment there was a panchayat in existence, in view of this declaration of law made by the Supreme Court in the aforesaid decision, it must be held that it is permissible for the authority concerned to constitute or reconstitute a panchayat area under Section 4(1) of the Act itself, even without following the procedure prescribed in Section 4(2) of the Act. There is yet another reason which comes in the way of accepting the argument that it is only under Section 4(2) of the Act that panchayat could be established now. Under the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (Act 20 of 1985), the population of a village or group of villages was fixed between 8000 to 12000. Whereas under Section 4(1) of the Act, the population of the village or villages vary between 5000 to 7000. When the criteria for establishing a panchayat area itself varies, there is a need to constitute panchayat areas as envisaged under the Act. Hence, I find no substance in this contention either.

11. Some of the learned counsel appearing in the cases addressed arguments as to the scope of revision or in relation to an opportunity being given to the parties concerned. Whether that opportunity was sufficient or not, those aspects need not be considered now, but dealt with at appropriate stage as and when each of the cases is taken up for consideration.

12. There is challenge to the constitutional validity of the Act itself and that is the subject-matter of consideration before a Division Bench in another writ petition and therefore, it is unnecessary for me to express any opinion on that aspect of the matter and the learned counsel also agreed not to address any arguments on that aspect. They confine their arguments only to challenging the constitutional validity of Section 4 of the Act and the notification issued thereto.

13. I shall now turn to the facts arising in this case.

The petitioner claims to be a resident of Ramakrishna Hegde Nagar (R.K.H. Nagar) which is part of Bangalore South Taluk. It is claimed that the said R.K.H. Nagar falls in the Assembly constituency of Varthur South, Bangalore, and is included in the Karnataka Legislature Voters List and also in the Lok Sabha Voters List. The population of the said R.K.H. Nagar is around 5100 persons according to 1991 census and at present there are atleast 6000 persons residing in the area. Therefore, it is claimed that R.K.H. Nagar itself should be constituted a panchayat area. This claim of the petitioner was not accepted by the respondents on the ground that the said area is not a revenue village for what could be constituted as a panchayat area is a revenue village/villages as contemplated under Section 4(1) read with Section 2(42) of the Act.

In this context, it is urged that the Governor of Karnataka issued a notification in exercise of powers under Section 2(42) of the Act specifying a revenue village to

be a village for the purpose of the said Act. When the Governor has specifically stated that it is only a revenue village that could be a village for the purposes of the Act, the authorities were justified in coming to the conclusion that the area where the petitioner resides cannot be declared to be a panchayat area. However, the learned counsel for the petitioner urged that one Agrahara, though not a revenue village, has been constituted to be a panchayat area under notification at Annexure-C. If that notification is not in conformity with the Act, the same may have to be declared illegal. But that circumstance does not entitle the petitioner to claim a similar benefit. In the circumstances, I do not think the petitioner can rely upon that ground.

14. It is next urged that R.K.H. Nagar is divided into two areas-one area being attached to Rachanahalli and the other to Thanisandra. Obviously the petitioner could not have raised this contention before the authorities concerned earlier because that notification has been issued under Section 5(5) of the Act which provides for delimitation of the constituencies. Whether that notification bifurcating R.K.H. Nagar into two areas is valid or not, is a separate matter and does not come in the purview of Section 4(1) of the Act.

15. In that view of the matter, I find no substance in any of the contentions urged by the petitioner. Petition is therefore dismissed. Rule discharged.