

(2000) 06 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 2597 of 2000

Ashok Ganapat Jadhav and Another

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 29-06-2000

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 3, 3(2), 3(3)
Bombay Village Panchayats Act, 1958 — Section 11, 4, 4(2)
Constitution of India, 1950 — Article 154, 163, 166, 226, 243

Citation : (2000) 4 MhLj 150

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Advocate : S.A. Bobde and Ketkar, for the Appellant; R.V. More and C.R. Sonawane, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—This petition, filed under Article 226 of the Constitution of India, takes exception to the communication dated 10th and 16th May, 2000 addressed by the Tahsildar, (on behalf of the State Election Commission) to the petitioner regarding the division of the Kharoli Gram Panchayat into two different Gram Panchayats viz. Kharoli Gram Panchayats and Kalij Gram Panchayat in Taluka Mahad, District Raigad.

2. On 22nd March, 2000 the Election programme for the Village Panchayat Elections was declared by the State Election Commission as required u/s 11 of the Bombay Village Panchayats Act, 1958 (The V. P. Act for short). The earlier tenure of the Kharoli Group Gram Panchayat was to expire on 4th September, 2000. However, on 2nd May, 2000 the Tahsildar addressed a letter to the Gramsevak of Kharpli informing him to hold elections for the Kharoli Group Gram Panchayat, whereas by the impugned communication he informed that the earlier decision to hold elections for the Group Gram Panchayat will have to be stayed in view of the decision taken by the Rural and Irrigation Department of the

Government of Maharashtra on 8th May, 2000 and fresh elections will be announced for two different Village Panchayats separately.

3. It has been contended by the Petitioners that the decision of the Government to bifurcate the Group Gram Panchayat and forming separate Gram Panchayats for Kharoli and Kalij is bad in law inasmuch as there was no prior consultation with the Zilla Parishad, Raigad, Village Panchayat, Kharoli and no hearing was given to the villagers before the said decision was taken by the State Government. It is further contended that the procedure adopted while bifurcating the Group Gram Panchayat into two separate Gram Panchayats is contrary to the law laid down by the Apex Court in the case of State of U.P. and Ors etc. v. Pradhan Sangh Kshettra Samiti and Ors. etc.,.

4. Chapter II of the Act provides for Gram Sabhas. Establishment and Constitution of Panchayats. The provisions of Section 4 of the Act originally read as under : -

"4. (1) After making such enquiry as may be prescribed, the State Government may, by notification in the Official Gazette, declare any local area, comprising a revenue village or a group of revenue villages or hamlets forming part of a revenue village, or other such administrative unit or part thereof, to be a village to be known by the name of village :

Provided that, where a group of revenue villages or hamlets or other such administrative unit or part thereof is declared to be a village, the village shall be known by the name of the revenue village, hamlet or as the case may be, administrative unit or part thereof, having the largest population:

(2) After consultation with the [Standing Committee and the Panchayat concerned [if it has already been established), the State Government may, by like notification, at any time

(a) include within or exclude from, any village, any local area or otherwise alter the limits of any village, or

(b) declare that any local area shall cease to be a village

and thereupon the local area shall be so included or excluded, or the limits of the village so altered, or, as the case may be, the local area shall cease to be a village."

5. By the 73rd Constitutional Amendment, Part IX consisting of Articles 243 to 243O, has been introduced in the Constitution. Article 243(g), defines "Village" to mean a village specified by the Governor by public notification to be a village for the purposes of this part and includes a group of villages so specified. Article 243(b) defines "Gram Sabha" to mean a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level, whereas Article 243(d) defines "Panchayat" to mean an institution (by whatever name called) of self-government constituted under

Article 243B, for the rural areas. Article 243A states that a Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law, provide. Article 243B states that there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part of the Constitution. Article 243D makes a provision for reservation of seats for Scheduled Castes and Scheduled Tribes including women belonging to the Scheduled Castes/Scheduled Tribes and also for other women in the Panchayats at all the levels. Article 243E provides for the term of the Panchayat which is for 5 years and Article 243G speaks of powers, functions and responsibilities of the Panchayat to be determined by the Legislature of the State.

6. Pursuant to the 73rd Constitutional Amendment, the State of Maharashtra amended the provisions of the Act and more particularly provisions of Section 4 of the Act by Maharashtra Amendment 21 of 1994 and the amended provisions of Section 4 read asunder : -

"4(1) Every village specified in the notification issued under Clause (g) of Article 243 of the Constitution of India and thereupon the local area shall be so included or excluded, or the limits of the village so altered, or, as the case may be, the local area shall cease to be a village. "

7. In the case of Village Panchayat Chikalthana and Anr. v. State of Maharashtra and Anr., decided by the Division Bench of this Court the extension of the Municipal Corporation area of Aurangabad city under the provisions of Section 3 of the Bombay Provincial Municipal Corporations Act, 1949 (Corporations Act for short) came to be challenged on the ground that the principles of natural justice were violated Inasmuch as there was no opportunity of hearing given to the villagers concerned which were brought within the extended Corporation limits. The Division Bench turned down the objection and held that the provisions of Section 3 of the said Act were valid even though there was no challenge to its validity and the principles of natural justice would not apply to such a case for extension of the Corporation limits. Similar issue had come up in the case of Kalyan Municipal Corporation when the municipal areas of Kalyan, Ambarnath, Dombivali and Ulhasnagar were sought to be merged by the Government under a draft notification issued u/s 3(3) of the Corporations Act. The proposed merger was objected, inter alia, on the ground that the principles of natural justice were violated when the final notification u/s 3(2) of the said Act was issued. This Court upheld the challenge raised in the petition for the merger of the different areas into Kalyan Municipal Corporation and observed, thus :-

"It was the avowed policy after Independence to change the socio-economic map of the village and town. A corporate life can only be ensured if there is a corporate conscience and an attitude to live together. City is an epitome of the social world where all belts of civilization interest along its avenues. A Municipal Corporation is ... in nature, where people belonging to different castes, creeds, religions and language want to live with each other. Town planning cannot be

denominational or fractional. It is not a museum of human beings otherwise Harijan Basils, Momlnpuras and such other Mohallas will have to be preserved to maintain its separate Identity and the socio-economic map of the village or city will never change. It cannot be forgotten that we are heading towards a global village. By saying this, we do not want to belittle the achievements of sacrifice of the Sindhi Community. However, that is not very relevant for deciding the question of the establishment of a Municipal Corporation. Its main object is to ensure better municipal government of the city. It appears that Government was also aware of this and this seems to be the reason why the decision "for the time being" is pertinent and clearly indicates that the Government wanted to reconsider the issue at a later stage. However, unfortunately till today Government has not taken any decision in that behalf."

8. The judgment of this Court came to be challenged before the Supreme Court in the case of *Sundarjas Kanyalal Bhathija and Ors. v. The Collector, Thane, Maharashtra and Ors.*, and the challenge was upheld by observing that the Government in the exercise of its powers u/s 3 of the Corporation Act is not subject to the rules of natural justice any more than is the Legislature Itself and the rules of natural justice are not applicable to legislative action plenary or subordinate. The Apex Court further observed that the procedural requirement of hearing is not Implied in the exercise of legislative powers unless hearing was expressly prescribed, by referring to its earlier Judgment in the case of *Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur*,

In the case of *Ganpatrao Bhosale and Ors. v. State of Maharashtra and Ors.* this Court was called upon to deal with the scheme of Sections 3 and 4 of the Village Panchayats Act and relying upon the earlier judgment of this Court in the case of *Village Panchyat Chikalthana v. State of Maharashtra (supra)* as well as the judgment of the Supreme Court in the case of *Sunderjas Kanyalal Bhathiya (supra)* held that the provisions of Section 3 are in the nature of conditional legislation laying down policy or guidelines to exercise the power and the powers under Sub-section (2) of Section 4 are required to be exercised by Issuing a notification for forming or establishing a new Village Panchayat. One of us (A.P. Shah, J.) was a party to the said Judgment. However the judgment of the Supreme Court in the case of *Baldev Singh and Ors. v. State of Himachal Pradesh and Ors.*, as well as *State of U.P. Ors. etc. v. Pradhan Sangh Kshettra Samiti and Ors. etc.*"(supra) were not brought to the attention of this Court. In addition, this Court was not invited to consider the amended provisions of Section 4 with that of the unamended provisions of the said section of V. P. Act. Under these circumstances, the view taken by this Court in *Ganpatrao Bhosale's case (supra)* requires to be reconsidered.

9. The main and-substantial question that we are required to consider in this petition is whether it was obligatory on the part of the State Government to give a hearing to the villagers before the impugned nodule notification was issued regarding the separation of a Group Gram Panchayat and forming two separate

Gram Panchayats in view of the amendment in Part IX of the Constitution under the 73rd Constitutional Amendment by incorporating Articles 243 to 243O.

10. In the case of Baldev Singh and Ors. v. State of Himachal Pradesh and Ors. a similar question had arisen for consideration before the Apex Court. The residents of the villages who were mostly agriculturists had challenged the validity of the notification for bifurcation before the High Court on the ground that they had no opportunity to put up their say against that notification and the challenge was turned down by the High Court. However, in Appeal before the Apex Court Ranganath Misra, J. observed :

"We accept the submission on behalf of the appellants that before the notified area was constituted in terms of Section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the views of the residents. Denial of such an opportunity is not in consonance with the scheme of the Rule of Law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fairway."

11. Articles 243 to 243O in Part IX of the Constitution deal with the provisions relating to Panchayat. Article 243B states that there shall be constituted in every State, Panchayats at the Village, intermediate and district levels in accordance with the provisions of this Part. Article 243C deals with the composition of Panchayats and states that all the seats in a Panchayats shall be filled by persons chosen by direct" election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area. Article 243E states that the tenure of the elected body of the Panchayat shall be for 5 years from the date appointed for its first meeting and no longer. Article 243G stipulates powers, authority and responsibilities of Panchayats, whereas Article 243H provides for powers to impose taxes by and funds of, the Panchayats. It would be desirable to reproduce the provisions of Article 243G of the Constitution, which read as under :-

"243G. Powers, authority and responsibilities of Panchayats. - Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein with respect to

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in

the Eleventh Schedule."

12. As observed hereinabove consequent to the said 73rd amendment to the Constitution the Government of Maharashtra has amended by the provisions of Section 4 of the Act and the term "village" has been defined by the Constitution in Article 243(g) to mean a village specified by the Government by public notification to be a village for the purpose of Part IX of the Constitution and includes a group of villages so specified. In the case of *State of U. P. and Ors. etc. v. Pradhan Sangh Kshettra Samiti and Ors. etc.* on referring to the provisions of Article 243(g) of the Constitution, the Apex Court held that the Governor does not exercise the executive functions individually or personally and executive action taken in the name of the Governor is the executive action of the State and, therefore, the function under Article 243(g) is to be exercised by the Governor on the aid and advice of his Council of Ministers. It was further observed by the Apex Court that in view of the provisions of Article 154 and 163 read with Article 166 of the Constitution, the Government means the Government of the State and all executive functions which are exercised by the Governor except where he is required under the Constitution to exercise the functions in his discretion, are exercised by him on the aid and advice of the Council of Ministers. Hence, whether it is a notification issued by the Government or a general or special order issued by the State Government, constitutionally both are the acts of the Governor. In the said case, the Supreme Court specifically dealt with the issue regarding giving adequate opportunity of hearing to the people of the village before the delimitation of the Panchayat was effected. It referred to its earlier pronouncements in the case of *Visakhapatnam Municipality v. Kandregula Nukaraju*, *S. L. Kapoor v. Jagmohan*, *Baldev Singh v. State of Himachal Pradesh* (supra). *Sunderjas Kanyalal Bhathiya v. Collector, Thane* (supra) and *Atlas Cycle Industries Ltd. v. State of Haryana*, and held that the ratio of those pronouncements required that a reasonable opportunity for raising objections and hearing to the villagers ought to be given in such matters since the change in the area of the local body results in civil consequences. The Apex Court, more particularly observed :

"It was not disputed before us that the action of bringing more villages than one under one Gram Panchayat when they were earlier under separate Gram Panchayats, does involve civil consequences. However, as held in *Visakhapatnam Municipality*, *S. L. Kapoor*, *Baldev Singh*, *S. K. Bhathiya* and *Atlas Cycles* cases, in matters which are urgent, even a post-decisional hearing is a sufficient compliance of the principles of natural justice i.e. *audi alteram partem*."

13. By now it is well settled in law that after the introduction of Part IX in the Constitution and the consequent amendments to the provisions of Section 4 of the V. P. Act, an opportunity of hearing prior to the delimitation order is passed, is mandatory and the order to be passed by the State Government for delimiting the areas of a Village Panchayat or separating a Group Gram Panchayat into two Village Panchayats mandate a prior opportunity of hearing to the village residents

in keeping with the rule of audi alteram partem. Even the language of the amended provisions of Section 4 of the Act is distinctly different from the old provisions and the amended provisions reflect the constitutional mandate so as to meet the aspirations and ambitions of the villagers. A village is a community which has its own rights, privileges, aspirations, obligations and responsibilities, etc., and, therefore, it would not be sufficient to consult only the Village Panchayat or a Committee of the Village Panchayat before delimiting the village areas. What is explicit in the constitutional mandate and the provisions of Section 4 of the Act is the mandatory requirement of the villagers being heard before such an order of delimiting is passed by the Government. This opportunity of hearing may be by way of displaying notice on the village Chawdi/Panchayat or any place prominent in the respective wards and/or by giving a public notice by beat of drums and it may not be necessary to give individual notice of hearing to every villager. So long as the mode of giving notice to all the villagers by way of publication, the announcement by beat of drums, etc. is followed and they are called upon to put up their say on the proposal of delimitation, the principles of natural justice would be met.

14. In the instant case, it is apparent that the villagers were not given an opportunity of hearing by any of the modes as stated hereinabove and the rule of audi alteram partem was so manifestly violated. The Impugned notification delimiting one Group Gram Panchayat into two separate Gram Panchayats is, therefore, in violation of the constitutional mandate as well as the scheme of Section 4 of the Act. Under the circumstances, the challenge to the said notification as raised in the instant case must be upheld.

15. For the reasons set out hereinabove, we allow the petition and quash and set aside the impugned decision of formation of two separate village Panchayats. The Government is at liberty to initiate the process of delimiting the villages afresh by following the provisions of law and the procedure as indicated in this judgment, if so desired. The said process should be completed as expeditiously as possible so that the elections to village Panchayats are held without further delay.

16. Rule is made absolute accordingly with no order as to costs.