

(2014) 12 BOM CK 0091

In the Bombay High Court

Case No : Public Interest Litigation No. 72/2013

Avinash Ramkrishna Kashiwar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Bombay General Clauses Act, 1904 — Section 24
Constitution of India, 1950 — Article 141, 226
Maharashtra Land Revenue Code, 1966 — Section 4

Citation : (2015) 1 ABR 553 : (2015) 3 ALLMR 772 : (2015) 2 BomCR 754 :
(2015) 5 MhLj 830

Hon'ble Judges : V.M. Deshpande, J;B.R. Gavai, J

Bench : Division Bench

Advocate : H.D. Dangre, M.V. Samarth, Advocate for the Appellant; S.M. Ukey,
Additional Government Pleader, Advocate for the Respondent

Judgement

B.R. Gavai, J.

1. Rule. Rule made returnable forthwith. Heard by consent of the learned counsel appearing for the parties.

2. The present public interest litigation has been filed by the residents of Sadak-Arjuni, praying for quashing and setting the Notification dated 26.07.2013 issued by respondent no.1 in respect of location of Sub Division at Morgaon-Arjuni.

3. The petitioners are the residents of Sadak-Arjuni in Gondia district. In the year 2000, Gondia district was carved out from the erstwhile Bhandara district, After carving out Gondia district from Bhandara, it has 8 talukas. It had only two Sub-Divisions viz. Gondia and Deori. Gondia Sub-Division was consisting of four Talukas i.e. Tiroda, Morgaon-Arjuni, Goregaon and Gondia, whereas Deori Sub Division was consisting of Deori, Sadak-Arjuni, Amgaon and Sakekasa talukas. There was demand from various quarters for having more Sub-Divisions. In response to the said demand, the State Government published a Notification on 26/28th June, 2012 in exercise of powers under Section 4 of the Maharashtra

Land Revenue Code, 1966 (hereinafter referred to as "the Code" for short) thereby proposing to constitute a separate Sub-Division for the talukas of Sadak-Arjuni and Morgaon-Arjuni and notifying the location of the said Sub-Division to be at Sadak-Arjuni. However, by the final Notification dated 26.07.2013 though the separate Sub-Division has been constituted for the Talukas of Sadak-Arjuni and Morgaon-Arjuni, the location of the headquarter is notified at Morgaon Arjuni and not at Sadak-Arjuni. Being aggrieved thereby, the present public interest litigation is filed.

4. Heard Mr. Samarth, learned counsel for the petitioners, Mr. S.M. Ukey, learned Additional Government Pleader for the respondents/State and Mr. H.D. Dangre, learned counsel for the intervenors who are the residents of Arjuni-Morgaon Taluka and are supporting the location of the headquarter of the Sub-Division at Morgaon-Arjuni.

5. Mr. Samarth, learned counsel appearing on behalf of the petitioners submits that once a draft notification provided that the headquarter of the Sub-Division would be at Sadak-Arjuni, it was not permissible for the State Government to change the same and notify the headquarter at Morgaon-Arjuni. The learned counsel submits that this would be in violation of the principles of natural justice. The learned counsel further submits that as a matter of fact the Collector, Gondia had recommended the establishment of the headquarter of the Sub-Division at Sadak-Arjuni. However, the State Government by ignoring the same, has established the headquarter at Morgaon-Arjuni. The learned counsel submits that this has been done in a mala fide manner under the influence of politicians from the Morgaon-Arjuni area. The learned counsel on merits submits that taking into consideration the geographical situation of Sadak-Arjuni, Sadak-Arjuni is the most convenient place for establishment of the headquarter. The learned counsel relies on the judgments of the Apex Court in the case of Bhikhubhai Vithlabhai Patel and Others Vs. State of Gujarat and Another, and in the case of Baldev Singh and Others Vs. State of Himachal Pradesh and Others, and on the judgments of the Division Bench of this Court in the case of Prashant Babusaheb Ghiramkar Vs. The State of Maharashtra and Others, , in the case of Ashok Ganapat Jadhav and Another Vs. State Election Commission and Others, , in the case of Maidan Bacchav Samiti and Shri Milind Shantilal Patel Vs. Ramchandra Padmakar Vaidya Hall Trust and Others, .

6. As against this, the learned Additional Government Pleader Mr. Ukey and Mr. Dangre, the learned counsel appearing on behalf of the intervenors submit that the powers exercised by the State Government are legislative in nature. It is, therefore, submitted that the principles of natural justice would not be applicable to the facts of the present case. It is further submitted that as a matter of fact the Collector had himself recommended the headquarter to be situated at Morgaon-Arjuni and not at Sadak-Arjuni. It is further submitted that the entire procedure prescribed under the Statute was followed by the State Government and as such no interference is warranted. The learned counsel interpreting the

provision of the Code submits that the opinion of the Collector or the other authorities would not be relevant and it is only the opinion of the State Government which should be relevant for determination of the issue as to which place is the suitable place for establishment of the headquarter of the Sub-Division. The learned counsel, therefore, submits that the petition deserves to be dismissed.

7. For appreciating the rival submissions, it would be necessary to refer to Section 4 of the Code.

"4. Constitution of Revenue areas:

1. The State Government may, by notification in the Official Gazette specify -

i) the districts [(including the City of Bombay)] which constitute a division;

ii) the sub-divisions which constitute a district;

iii) the talukas which constitute a sub-division;

iv) the village which constitute a taluka;

v) the local area which constitute a village; and

vi) alter the limits of any such revenue area so constituted by amalgamation, division or in any manner whatsoever, or abolish any such revenue area and may name and after the name of any such revenue area; and in any case where any area is renamed, then all references in any law or instrument or other documents to the area under its original name shall be deemed to be references to the area as renamed, unless expressly otherwise provided:

Provided that, the State Government shall, as soon as possible after the commencement of this Code, constitute by like notification every wadi, and any area outside the limits of the gaathan of a village having a separate habitation (such wadi or area having a population of not less than [three hundred, as ascertained by a Revenue Officer not below the rank of a Tahsildar]) to be a village; and specify therein limits of the village so constituted.

2. The collector may by an order publish in the prescribed manner arrange the villages in a taluka which shall constitute a saza; and the sazas in a taluka which shall constitute a circle, and may alter the limits of, or abolish any saza or circle, so constituted.

3. The divisions, districts, sub-divisions, talukas, circles, sazas and villages existing at the commencement of this Code shall continue under the names they bear respectively to be the divisions, districts, sub-divisions, talukas, circles, sazas and villages unless otherwise altered under this Section.

4. Every notification or order made under this Section shall be subject to the condition of previous publication; and the provisions of Section 24 of the Bombay General Clauses Act, 1904, shall so far as may be apply in relation to such

notification or order, as they apply in relation to rules to be made after previous publication."

8. The perusal of sub-section (1) of Section 4, therefore, would reveal that the State Government is empowered to specify the District which constitute a division; the sub-divisions which constituted a district; the talukas which constitute a sub-division; the village which constitutes a taluka; the local area which constitutes a village by publishing in the official gazette. Likewise under Clause (vi) of sub-section (1) of Section 4, the State Government is also empowered to alter the limits of any such revenue area so constituted by amalgamation, division or in any manner whatsoever, or abolish any such revenue area and may name and after the name of any such revenue area. However, sub-section (4) of Section 4 provided that every notification or order made under the said section shall be subject to the condition of previous publication and the provisions of Section 24 of the Bombay General Clauses Act, 1904, shall, so far as may be applied in relation to such notification or order, as they apply in relation to rules to be made after previous publication.

9. It would thus be necessary to refer to Section 24 of the Bombay General Clauses Act, 1904 which reads thus:-

"24. Where, by any Bombay Act [or Maharashtra Act], a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely:-

a) The authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

b) The publication shall be made in such manner as that authority deems to be sufficient or, if the condition with respect to previous publications so requires, in such manner as the [Central Government, or as the case may be, the [State] Government] prescribe;

c) There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

d) The authority having power to make the rules or by-laws, and where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority, having power to make the rules or by-laws from any person with respect to the draft before the date so specified ;

e) The publication in the [Official Gazette] of a rule or by-laws purporting to have been made in exercise of a power to make rules or by- laws after previous publication shall be conclusive proof that the rule or by-law has been duly made."

10. Clause (a) of Section 24 of the Act would, therefore, provide that the

authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby. Clause (b) provides that the publication shall be made in such manner as that authority deems to be sufficient or if the condition with respect to previous publication so requires, in such manner as the Central Government, or as the case may be, the State Government, prescribes. Clause (c) provides that there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration. Clause (d) provides that the authority having power to make the rules or by-laws, and where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority, having power to make the rules or by-laws. Clause (e) provides that the publication in the official gazette of a rule or by-laws purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

11. No doubt that the power to be exercised by the State under sub-section (4) is legislative in nature. No doubt that it is also equally settled that the principles of natural justice are not required to be followed by the authority when it discharges its legislative function. However, when the Legislature itself in its wisdom has provided that the principles of natural justice are required to be followed, then authority while exercising the power is bound to follow the principles of natural justice. In the present case, sub-section (4) of Section 4 of the Code specifically provides that the provision as made in section 24 of the Bombay General Clauses Act shall apply in relation to the notification or order to be issued under said Section 4.

12. The Apex Court in the case of State of Punjab Vs. Tehal Singh and Others, has observed thus:

"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."

13. It could thus be seen that the Apex Court has clearly held that an act legislative in character primary or subordinate, is not subjected to rule of natural justice. It has, however, held that in case of subordinate legislation, the legislature may provide for observance of principle of natural justice or provide for hearing to the residents 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. The Apex Court has further held that 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.

14. The Apex Court in the case of State of Orissa Vs. Sridhar Kumar Mallik and Others, , was considering a question as to whether the notification issued by the State Government for the purpose of constituting a notified area under the Orissa Municipal Act, 1950 was legal or not. The Apex Court has observed thus:-

"6. The extension of the Orissa Municipality Act to an area other than a municipality is a matter of serious moment to the residents of the area. It results in the provisions of amenities and conveniences necessary to civil life and their regulation by a local body. But the Act also provides for the imposition of taxes of different kinds on the residents. The tax structure does not embody an integrated unified impost expressed in a single tax measure. Different kinds of taxes are contemplated by the Act. The scheme set forth in Chapter XXX-A of the Act intends that before the Government extends the operation of the Act to an area under a municipality it must afford an opportunity to the local residents to object to the proposed action. The objections are submitted to the District Magistrate, who forwards them along with his views to the State Government. The State Government must take into consideration all the material before it and decide thereafter what should be the precise area to which the Act should be extended, and indeed whether all the provisions of the act or only certain specified provisions should be so extended. The possibility of some only of the provisions of the Act being applied to the notified area is evident from the terms in which the grant of power has been conferred on the State Government. Sub-section (1) of Section 417-A specifically envisages that when issuing the notification contemplated therein the State Government must decide whether administrative provision needs to be made "for all or any of the purposes" of the Act in the area proposed to be notified. Unless the proposal formulated in the proclamation made under sub-section (1-a) of Section 417-A is precise and clear, and indicates with sufficient accuracy the area intended to be notified, and further indicates whether the administrative provision is proposed for all the purposes of the Act or only some of them, and if only some of them then which of them, it will not be possible for the residents to properly avail of the right conferred on them by the statute to make their objections to the proposal of the State Government. We do not see how it can be otherwise."

(Underlining ours)

15. It could thus be seen that the Apex Court has held that the scheme set out in the said Act provides that before the Government extends the operation of the Act to an area under a municipality, it must afford an opportunity to the local residents to object to the proposed action. It could be further seen that the Apex Court has further held that unless the proposal formulated in the proclamation made under sub-section (1-a) of Section 417-A is precise and clear and indicates with sufficient accuracy the area intended to be notified and further indicates whether the administrative provision is proposed for all the purposes of the Act or only some of them, and if only some of them then which of them, it will not be possible for the residents to properly avail of the right conferred on them by the statute to make their objections to the proposal of the State Government. After reproducing the notification in paragraph 7, the Apex Court held that the notification was not of the kind which will ensure that the intention behind making it and calling for objections will be served. It could thus be seen that, it has been held by the Apex Court that a draft notification is not an empty formality. The draft notification must be precise and clear and should indicate with sufficient accuracy the area intended to be notified , so that the opportunity available to the citizens can be effectively availed by them by making their objections/suggestions in proper perspective.

16. It will also be relevant to refer to the observations of the Apex Court in the case of *The Municipal Corporation Bhopal, M.P. Vs. Misbahul Hasan and Others*, . The Apex Court while construing the provisions of Section 24 of the M.P. General Clauses Act, 1955 which is *pari materia* with Section 24 of the Bombay General Clauses Act, has observed thus:-

"13. The legislative procedure envisaged by Section 24, set out above, is in consonance with notions of justice and fair-play as it would enable persons likely to be affected to be informed so that they may take such steps as may be open to them to have the wisdom of a proposal duly debated and considered before it becomes law. This mandatory procedure was not shown to have been complied with area."

17. It could thus be seen that it appears to be settled position of law that the requirement of previous publication inviting objections and suggestions is not an empty formality. It is with an intention to enable persons likely to be affected , to be informed, so that they may take steps as may be open to them and the objections/suggestions made would be required to be taken into consideration by the authorities before issuing a final notification. In the present case, the draft notification provided for establishment of headquarter of the sub-division at Sadak-Arjuni. However, the final notification provides for establishment of the headquarter at Morgaon-Arjuni. It could thus be seen that insofar as the establishment of headquarter is concerned, the final notification is totally different from the draft notification.

18. The learned Additional Government Pleader as well as Mr. Dangre, learned counsel appearing on behalf of the intervenors heavily relied on the observations of the Division Bench of this Court in the case of Prashant Babusaheb Ghiramkar (supra). In the said case, in the draft notification the headquarter in respect of sub-division of Purandar and Daund talukas was shown at Purandar (Saswad). However, in the final notification the headquarter of the sub-division was notified at Pune. The Division Bench of this Court held that the action of the State Government was not permissible. The Division Bench has observed thus:-

"15. We are in respectful agreement with the principle of law enunciated as above by the Rajasthan High Court. When a draft rule or by-law is published and objections are invited to it as required under section 24 of the Bombay General Clauses Act, it is open for the rule making authority to consider objections and suggestions and thereafter make changes to it, but those changes must be incidental or ancillary to the draft rule or by-law. Those changes must be conceivable within the frame-work of the draft proposal and not foreign to the draft. For example, in our case, when two or more Talukas are proposed to be included within a sub-division with headquarters at one Taluka, the proposal after consideration of suggestions and objections may well be altered by dropping one or the other Taluka/s from the proposal or changing the headquarters from one of those Talukas to the other of them. But providing for a headquarters at an altogether different place not included in any of the Talukas forming the sub-division was a proposal foreign to the draft. There was no opportunity afforded to the members of public to make objections or suggestions to such a proposal. Such a proposal was not conceivable within the framework of the draft proposal."

(emphasis supplied)

Relying on the aforesaid observations of the Division Bench, which have been emphasised by us, it is contended by the learned counsel for the State as well as the intervenors that the Division Bench has clearly held that the change of the headquarter from one of those talukas to the other of them would be permissible. In our considered view the aforesaid observations cannot be held to be a binding precedent or a ratio decidendi to hold that the change of headquarter from one taluka as proposed in the draft notification to the other taluka not proposed in the draft notification is permissible.

19. The Apex Court in the case of The Regional Manager and Another Vs. Pawan Kumar Dubey, has observed thus:-

"It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

20. It could thus be seen that the Apex Court has held that it is the rule deducible from the application of law to the facts and circumstances of a case

which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. It has been further held that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

21. It will also be relevant to refer to the judgment of the Apex Court in the case of Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, . The Apex Court has observed thus:-

"What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."

It could thus be seen that the Apex Court has clearly held that it is not everything said by a Judge while giving judgment that constitutes a precedent. What is binding is the principle upon which the case is decided. It is further held that what is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. It is further held that every judgment must be read as applicable to the particular facts proved or assumed to be proved. It is further held that it would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it. It would be further relevant to refer to the following observations:-

"Therefore, in order to understand and appreciate the binding force of the decision it is always necessary to see what were the facts in the case in which decision was given and what was the point which had to be decided. No judgment can be read as if it is statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law."

The Apex Court in clear terms has held that in order to understand and appreciate the binding force of a decision, it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. It is, therefore, held that a word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law.

22. In the light of the aforesaid, let us examine what were the facts in the case of Prashant Babusaheb Ghiramkar(supra) and as to whether the observations on which the learned counsel for the respondents rely can be treated as a binding precedent. The question that arose for consideration in the aforesaid case was that as to whether the headquarter of the sub-division could be permissible at a place outside the sub-division instead of the one proposed in the draft notification. The Division Bench held that was not permissible. However, the question as to whether if the draft notification provides for establishment of headquarter at "A" place, whether the final notification can provide for establishment of headquarter at "B" place, never arose for consideration. As such we are of the considered view that the aforesaid observations cannot be said to have a binding effect or constructed as ratio decidendi for deciding the present petition. As held by the Apex Court in the case of the Regional Manager (supra), a slight difference of facts can make a vast difference in the result.

23. In the present case, we are of the considered view that the objections and suggestions that were invited were for establishing the headquarter of the sub-division at Sadak-Arjuni and not at Morgaon-Arjuni. As already held hereinabove the right provided in the statute to the citizens cannot be an empty formality. It would have been a different matter that the draft proposal itself provided the headquarter to be either at Sadak-Arjuni or Morgaon-Arjuni. However, the draft proposal specifically provided for the headquarter of the sub-division only at Sadak-Arjuni.

24. In that view of the matter, we find that the impugned notification is in violation of the provisions as incorporated in Section 4 of the Code as well as Section 24 of the Bombay General Clauses Act. As has been held by the Apex Court that provisions are mandatory and any departure therefrom is not sustainable in law.

25. Insofar as the merits of the rival claims are concerned, we do not propose to go into that aspect. By now it is settled position of law that, in such matters, we cannot sit in appeal over the decisions of the authorities. While exercising the powers of the judicial review under Article 226 of the Constitution of India, a limited inquiry that would be permissible is as to whether the decision making process of the authorities is legal or not and as to whether the same suffers from the illegality, irrationality or the arbitrariness. In that view of the matter though it is tried to be urged at length that either Sadak-Arjuni or Morgaon-Arjuni are more suitable, it will not be permissible for us to go into that aspect of the matter. That decision will have to be left to the wisdom of the authority vested with the said power.

26. In the result, we hold that the impugned notification dated 26.07.2013 is not sustainable in law and, therefore, quashed and set aside. Rule is, therefore, made absolute in the aforesaid terms with no orders as to costs.