

(1986) 03 KAR CK 0037
In the Karnataka High Court
Case No : W.P. No. 5433 of 1986

Bandappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-03-1986

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 4(3)

Citation : (1986) 1 KarLJ 419

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

1. Petitioners are all residents of village Chillargi, Nandagaon, Janawada, Ashtoor and Chitta in Bidar District. They are aggrieved by the order of the Divisional Commissioner, Gulbarga made on 28th day of February 1986 setting aside the notification issued by the Deputy Commissioner under Sub-section (1) of Section 4 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (hereinafter referred to as the Act).

2. By the said notification Deputy Commissioner had constituted Chillargi Mandal with Head Quarters at Chillargi consisting of Nandagaon, Mirzapur, Kaplapur, Amalpad, Jampad, Almaspur, Rasoolabad, Chillargi, Ashtoor, Imamabad and Malagao. Villagers of Malagao, Kaplapur and Ashtoor preferred a revision petition before the Divisional Commissioner under Sub-Section (3) of Sec. 4 of the Act. In disposing of the said revision petition, the Divisional Commissioner came to the conclusion that Chillargi was too far removed from the other villages in the Mandal as disclosed by P.W.D. map and the records. He had also called for the Deputy Commissioner's remarks on the revision petition. Those remarks indicated that Chillargi had been chosen as head quarters having regard to its population which is the highest in the Mandal as per 1971 census and also because it had the primary health centre. Having regard to its remote situation from most of the villages in the Mandal, the Divisional Commissioner has preferred Malagao which evidently has lesser population compared to the other village for locating headquarters, having regard to its central situation. That

cannot be said to be either non-application of mind or arbitrary exercise of power.

3. Petitioners prayer to quash sub-Section (3) of Sec. 4 as conferring arbitrary power on the Divisional Commissioner is not well founded on any legal principle. The revisional power has specified meaning and scope judicially explained in more than one decision. He is empowered to afford an opportunity of being heard to the concerned persons before he disposes of a revision application before him or even when he exercises the power suo-moto. The challenge to the Constitutional validity of the sub-section is therefore totally misconceived.

4. The next argument that concerned persons have not been heard does not also come to his aid. In the scheme of the act it is difficult to determine who the concerned person are. If the expression "concerned person" occurring in Sub-Sec. (3) of Sec. 4 means the villagers of the Mandal, then persons of all the villages in the Mandal would become concerned persons and they will have to be heard. There is no indication in the scheme of the Act that such a thing is contemplated before Mandal is formed. Obviously, such a scheme in regard to the constitution of the Mandal would result in no Mandal being formed. It is highly non-pragmatic. Therefore the Government has conferred the power of constitution of Mandal on the Deputy Commissioner who is the head of the District Administration in all branches except health. Public Works and Education. He is placed in the best position to know about his district and to set up the revenue villages, in his District as Mandals. He is assisted by numerous staff of District Departments like Block Development, Revenue, Police etc., and therefore in a more eminent position than others to decide the grouping of the villages of the Mandal.

5. The restrictions imposed in the statute are (1) general order or special order that the Government may make under Sub-section (1) of Sec. 4; (2) the population limit is prescribed by the legislation itself in Sub-section (1). Apart from these there is no limitation on his powers except that all final notifications must be preceded by a proposal which should be published previous to the final notifications.

6. There is enough guidance in these provisions to enable the Deputy Commissioner to form Mandals in the District.

7. Sub-Section (3) confers power on the Divisional Commissioner to rectify any error that may be in the final notification of the Deputy Commissioner issued under sub-section (1) of Sec. 4 or under Sub-Sec. (2) of Sec. 4 of the Act. That is a check to any arbitrariness in the decision of the Deputy Commissioner. Therefore, to accept the argument that all villagers must be heard would not be appropriate to the scheme of the Act. This petition is therefore misconceived and it is rejected.