

(1986) 05 KAR CK 0009
In the Karnataka High Court
Case No : W.A. No. 694 of 1986

Bhadregowda

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-05-1986

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 4, 4 (1)

Citation : (1986) ILR (Kar) 2676

Hon'ble Judges : Jagannatha Shetty, Acting C.J.; Venkatesh, J

Bench : Division Bench

Advocate : Swaminathan, for H.S. Jois, for the Appellant;

Final Decision : Dismissed

Judgement

Jagannatha Shetty, J.—This appeal is directed against the order dated April 1, 1986 of the Learned Single Judge dismissing the appellant's Writ Petition No. 5729/86.

2. The challenge in the Writ Petition was to the notification dated January 16, 1986 of the Deputy Commissioner, Chickmagalur District, declaring an area comprising of 13 villages referred to in that notification as a Mandal and specifying village "Antharagatte" as the headquarter of that Mandal. That notification was issued by the Deputy Commissioner exercising his powers under Sub-section (1) of Section 4 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (called shortly "the Act"). The Learned Single Judge found no reason to disturb the notification.

3. We entirely agree with the order of the Learned Judge. The Act provides for the constitution of Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats Nyaya Panchayats and matters connected therewith. The aims and objects of the Act as spelled out in the very preamble to the Act are to provide for decentralisation of powers and functions under certain enactments to the

aforesaid rural local bodies in order to promote the development of democratic institutions and to secure a greater measure of participation by the people in 5 year plans, in local and Government affairs The sharing of power by the citizens residing in rural areas of the State is sought to be achieved by the creation of a three tier local bodies. They are the Mandal Panchayats, Taluk Panchayat Samithis and Zilla Parishads.

4. The establishment and constitution of Mandal Panchayat with which we are concerned is provided for in Chapter III of the Act which contains Sections 4 to 55.

Section 4 of the Act is relevant for our purpose and it reads :

"4. Declaration of mandal and establishment of Mandal Panchayats :-- 1) Subject to the general or special orders of the Government, the Deputy Commissioner, if, in his opinion, it is expedient to declare any area comprising a village or group of villages having a population of not less than eight thousand and not more than twelve thousand to be a mandal, may after previous publication, declare such area as a mandal for the purpose of this Act and also specify its headquarter :"

Under Sub-section (1) of Section 4 of the Act, the Deputy Commissioner of the Revenue district is entrusted with the responsibility of declaring an area comprising a village or group of villages within his jurisdiction as a Mandal. That declaration is required to be made by him after previous publication in the gazette and subject to the general or special orders of the Government.

5. The notification dated January 16, 1986 referred to in para-2 above is a notification thus made under Sub-section (1) of Section 4 of the Act constituting a mandal consisting of 13 villages and specifying village "Antharagatte" as its Headquarter. The previous notification made by the same Deputy Commissioner was dated December 16, 1985 where-under the headquarter proposed was "Asandhi" and Mandal proposed to be constituted covered 15 villages.

What has been stressed before us is that in the final notification the Deputy Commissioner ought not to have changed the headquarter and ought not to have reduced the number of villages also. The change of headquarter it is contended, particularly from "Asandhi" to "Antharagatte", was without an opportunity to villagers and such a notification would, therefore, be bad and illegal.

6. In our opinion there is no sustainable case for the appellants. The earlier notification dated December 16, 1985 was in fact only a pre-publication of the notification containing tentative proposals in the matter and inviting objections and suggestions thereby. In that notification itself it is stated that such of those who had objections to the proposals contained in that notification or who had suggestions to make in the matter should offer their views on or before January 1, 1986. In the final notification dated January 16, 1986, which is impugned herein, reference is also made to the earlier notification inviting objections and suggestions and it is further stated that all those objections and suggestions

have been taken into consideration in issuing the impugned notification. This is fully in compliance with the statutory requirements and no further rules of natural justice could be insisted upon in this context.

7. To repeat, the Deputy Commissioner has declared the area as a mandal. He has selected a cluster of villages. He has specified its headquarter. These have been done after previous publication of the proposal, thereby inviting objections and suggestions from the public. He has taken into consideration the objections and suggestions. Consequently he had to change the headquarter from ""Asandhi" to Antharagatte". He has also deleted a few villages. It is not necessary that every thing that has been proposed should be confirmed. If that is the rule, then it would be futile to have a previous publication of the proposal. There is therefore, no substance in the contention that the Deputy Commissioner had violated the statutory requirements in constituting the Mandal or specifying its headquarter.

8. In this connection, it is also relevant to note that a revision to the Divisional Commissioner is provided against the declaration made by the Deputy Commissioner. The appellants had availed of that remedy and the Divisional Commissioner after considering all the facts and circumstances, besides hearing the concerned, has upheld the decision of the Deputy Commissioner in specifying "Antharagatte" as the head quarter of the mandal. While hearing the revision he had also secured the remarks of the Deputy Commissioner re : the objections of some of these villagers.

9. Any place selected as the headquarter of the Mandal, in our opinion, should be well connected to the areas comprised in the Mandal and also should have other facilities since the elected representatives of the Mandal will have to meet periodically and transact their business. The people of the Mandal should have easy access to participate in the activities of the Mandal. In the instant case we are satisfied that both the Deputy Commissioner and the Divisional Commissioner have duly taken into consideration all the relevant facts before specifying "Antharagatte" as the headquarter of the Mandal.

10. There is also another reason as to why the appellants cannot succeed on the ground that there has been a violation of the rules of natural justice in issuing the impugned notification by the Deputy Commissioner. The power is in the nature of a conditional legislation. These principles have been explained by the Supreme Court in the *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, and again reiterated by the Supreme Court in AIR 1981 1127 (SC) . There the question involved was as to whether the strict observance of the principles of natural justice was necessary while declaring an area as a market area and naming a place as the market yard as provided under the various Agricultural Produce Marketing Acts. While answering the said question in the negative, the Supreme Court observed with reference to one of the cases arising under the Bihar Act as under (at para-7):

"In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was the duty of the concerned authority to invite and hear objections. Failure to do so was a violation of the principles of natural justice and the notification disestablishing the market yard at one place and establishing it elsewhere was therefore, bad. It was said that even as there was express provision for inviting and hearing objections before a "market area" was declared under the Act, so should objections be invited and heard before a "market yard" was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity ; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice. In *Bates v. Lord Hailsham* (1912) 1 WLR 1373, Megarry, J., pointed out that the rules of natural justice do not run in the sphere of legislation primary or delegated, and in *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, , our brothers Desai and Venkataramaiah, JJ., approved what was said by Megarry, J., and applied it to the field of conditional legislation too. In *Paul Jackson's Natural Justice* (Second Edn), it has been pointed out at (at page 169) :

"There is no doubt that a Minister, or any other body, in making legislation, for example, by statutory instrument or by-law, is not subject to the rules of natural justice-- *Bates v. Lord Hailsham of St. Marylebone* (1972) 1 WLR 1373--any more than is Parliament itself. *Edinburgh and Dalkeith Ry. Co. v. Wauchope* (1842) 8C1 & F 710, 720 per Lord Brougham, *British Railways Board v. Pickin* 1974 AC 765."

Prof H.W.R. Wades has similarly pointed out in his *Administrative Law* (4th Edn.) :

"There is no right to be heard before the making of legislation, whether primary or delegated, unless it is provided by statutes. There is, therefore, no substance in the invocation of the rules of natural justice."

The purpose and the nature of the power conferred on the Deputy Commissioner and the declaration to be made by him under Sub-section (1) of Section 4, are not far removed and indeed, they are similar in purpose and object of the statute considered by the Supreme Court in the aforesaid decision. We, therefore, see no reason to disagree with the view taken by the learned single Judge.

11. In the result, the appeal fails and is dismissed.