

(1994) 08 KAR CK 0043
In the Karnataka High Court
Case No : Writ Petition No. 38480 of 1993

Chickamuniswamy

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Panchayat Raj Act, 1993 — Section 4, 4 (2), 4 (3)

Citation : (1994) ILR (Kar) 2963 : (1994) 4 KarLJ 662

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : N.S. Srinivasan, for the Appellant; B.J. Somayaji, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—By this Petition, the petitioner is challenging the Notification bearing No. CLN 2/CR-3/93-94 (Annexure-C) dated 16-8-1993 whereby Respondent No. 3 i.e. the Deputy Commissioner, Kolar District, Kolar u/s 4 of the Karnataka Panchayath Raj Act has specified Inorahosahalli as the headquarters of the Panchayat and the area comprising of the villages namely, Buadabele Honnenahalli, Madivala, Guttahalli, Gandhinagara, Kanibele, Doddaankandanahalli, Yaluvahalli, Karamangala, Tyaranahalli, Kashipura, Inorahosahalli, Ombattuguli and Goravanahalli and also the common order dated 7-9-1993 passed in GR.Pan.(K) Revision. Petn.No. 1, 3 and 5 of 93-94 by the second respondent upholding the Notification. The learned Govt. Counsel raised objection to the maintainability of the Writ Petition. He submitted that it is a matter of administrative policy and in this case, it is not proper for this Court to interfere under Article 226 of the Constitution of India. At this juncture, the learned Counsel for the petitioner submitted that his further grievance is that the matter has been disposed of by the Commissioner exercising the revisional power, and the petitioner has not been given an opportunity of being heard in the matter. I have got the order passed by the Commissioner read over and

translated into English by the learned Government Advocate and as well by the petitioner's Counsel so that I could understand the same. As regards the question that the petitioner is an aggrieved person and entitled to the relief or not, suffices it to say petitioner would have so entitled for filing the revision in view of the scheme of the revisional provision of the Act as per Chapter III of the Karnataka Panchayatraj Act, 1993 and more specifically Section 4 and Sub-sections 1, 2 and 3 which reads as under:

"4. Declaration of Panchayat Area and Establishment of Grama 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 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;

Provided that the Government may order that an area with a population of not less than two thousand five hundred may be so declared as a Panchayat area in such areas of the districts of Belgaum, Chickmagalur, Dakshina Kannada, Dharwar, Massan, Kodagu, Shimoga and Uttar Kannada as may be specified by the Government;

Provided further that irrespective of population, wherever it is found necessary, the Government, as a special case, may, order that an area within a radius of five kilometers (diameter of ten kilometers) from the centre of a village may be so declared as a Panchayat area in such areas of the districts of Belgaum, Chickmagalur, Dakshina Kannada, Dharwar, Hassan, Kodagu, Shimoga and Uttara Kannada as may be specified by the Government;

Provided also 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.

(2) Subject to the general or special orders of the Government and the provisions of this Act, the Deputy Commissioner may, at the request of the Grama Panchayat concerned, or otherwise, and after previous publication of the proposal by notification, at any time;

(a) increase the area of any Panchayat area by including within such Panchayat area any village or group of villages;

(b) diminish the area of any Panchayat area by excluding from such Panchayat area any village or group of village;

(c) alter the head quarters of any Panchayat area;

(d) alter the name of any Panchayat area; or

(e) declare that any area shall cease to be a Panchayat area.

(3) The Commissioner may either on an application made within thirty days from the date of the notification by any person aggrieved by such notification, or suo-moto, and after giving a reasonable opportunity of being heard to the applicant or the Grama Panchayat concerned revise the orders of the Deputy Commissioner under Sub-section (1) or Sub-section (2) and may also if he considers necessary, modify it as provided in the third proviso to Sub-section (1). Every order so passed revising or modifying the order of the Deputy Commissioner shall be published in the official gazette.

(4) In every Panchayat area declared as such under this Section, there shall be established a Grama Panchayat."

2. It appears that the Legislature while making provision of establishing Panchayat has provided procedure therefore as well limitations thereto to the effect that subject to the conditions of the special order or the general order of the Government, the Deputy Commissioner is competent to declare an area comprising of 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 and can also specify its Headquarters. Sub-section 2 further provides that Deputy Commissioner may at the request of the Gram Panchayat but subject to the general or special order of the Government, either on the request made by the Gram Panchayat concerned or otherwise with the previous publication of the proposal by notification, increase the area of any panchayat area or diminish the same. He can also alter headquarters of any Panchayat area or he can declare that any Panchayat area shall cease to be panchayat area. Sub-section (3) makes a provision for the revision of the order of the Deputy Commissioner either suo motu or by revision petition moved within 30 days from the date of notification by any person aggrieved by such notification. The scope of revision has not been specified and therefore the power of the Commissioner with the appeal be equivalent to that of the Original authority, subject to the conditions the original authority exercise its jurisdiction. It is open to the Commissioner to either refuse and alter the notification, he can also modify it or he can reject the revision and affirm the order/notification passed by the Deputy Commissioner. His powers are as wide as the original Authority. One thing is clear that the Legislation has provided that if any person is aggrieved by the notification issued either under Sub-section (1) or (3) either declaring an area to be an area within a Panchayat or excluding it from Panchayat area, for declaring headquarters of the Panchayat at a specified place and one feeling aggrieved thereby can file the revision against the same as well.

3. So, any person who feels aggrieved from that notification can file revision before the Commissioner and in such a case, it cannot be said that a person cannot be aggrieved and cannot be a party to the decision taken in the matter of fixation of headquarters or otherwise in view of the above Section itself, and nothing appearing from the perusal of Section 4 read with Sub-section (3)

providing otherwise. The Legislature has granted him that he can apply for revision but so far as the question is where the headquarters of the Panchayat should be located or not. This question with reference to the jurisdiction under Article 226 cannot be adjudicated by this Court. The jurisdiction of this Court under Article 226 of the Constitution of India is limited to particularly in the matters of Writ of Certiorari or Prohibition to the question of jurisdiction or in the error of jurisdiction or illegal exercise of jurisdiction or error of law apparent on record. In the present case, as regards the question of location of headquarters of the Panchayat is concerned, Deputy Commissioner has passed the above order taking a decision of such matter looking to the local situation, the distance, convenience and allied matters. The Legislature provides that the Commissioner may revise the order of the Deputy Commissioner if he thinks so on any of the above circumstances. In the present case, a reading of the order which has been read over and translated into English by the Government Advocate reveals that the objections raised on behalf of the petitioner as well as the other Caveator have been considered by the Commissioner and the Commissioner has taken into consideration all aspects like its distance from the other villages and its location and he has also taken into consideration other matters with regard to establishing headquarters. When this question has been considered by the authorities, in my opinion, the orders of either Deputy Commissioner or the Commissioner cannot be said that they are suffering from error of jurisdiction and nor from any of the errors has been pointed out. While passing the order, relevant situations with regard to its distance to the other villages and its connection to the Highway have been considered and place of headquarters established accordingly. Therefore as this Court does not interfere with the matters of policy unless the orders appear to be vitiated either by the error of statutory law or Constitutional Law I am not inclined to interfere with the same under Article 226 of the Constitution.

4. Having thus considered, in my opinion, the Petition is liable to be dismissed. Accordingly, this Petition is dismissed with the above observations.

5. While I am concluding the order learned Government Counsel has sought a clarification that the Mandal Panchayat can pass a resolution making fresh request to the Deputy Commissioner in the matter if and when it so desires. There has been no need to make such a request. Section 4(2) provides for alteration in this regard audit is provided that at request Gram Panchayat Headquarters may be changed. When this is the position of law, it is always open to the Gram Panchayat or Mandal Panchayat, if it decides in changed circumstances in accordance with law, to make, reference to the Deputy Commissioner or Commissioner for the purpose. In that case, this order dismissing the Writ Petition shall not come in the way. With, these observations the Writ Petition is hereby dismissed.