

(2010) 08 KL CK 0176

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23346 of 2010 (P)

E. Gopalakrishnan and C.P. Alavi

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Constitution of India, 1950 — Article 124(2), 217(1), 221(1)
Kerala Panchayat Raj Act, 1994 — Section 4(2)

Citation : (2010) 08 KL CK 0176

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : G. Sreekumar, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The petitioners respectively are the Chairman of the Standing Committee of Mannarkad Block Panchayat and the President of Thachanattukara Grama Panchayat. Thachanattukara Grama Panchayat was included in Mannarkad Block Panchayat as per the 1994 notification and now it has been excluded from the said Block Panchayat and is ordered to be included in the Sreekrishnapuram Block Panchayat. The same is under challenge in this writ petition.

2. Ext.P1 is the notification issued by the Government proposing the changes with regard to reorganisation of Block Panchayats in various districts and the same is dated 5.6.2010. The proposal was opposed by the Thachanattukara Grama Panchayat as well as Mannarkad Block Panchayat and the petitioners have also objected to the same by separate representations. These are produced as Exts.P2 to P4.

3. Mainly it is contended that the reorganisation is not in terms of the geographic as well as administrative convenience and the factors will only justify the retention of the Panchayat in Mannarkad Block Panchayat itself. The various

Government offices like Taluk Office, Taluk Supply Office, Sales Tax Office, Sub Registrar Office, Educational Office, etc. are in Mannarkad and the exclusion will put the general public in difficulties. Importantly, it is contended that at present the distance from Thachanattukara Grama Panchayat to Mannarkad is only 12 kms. and to arrive at Sreekrishnapuram they will have to travel 22 kms. at least.

4. Apart from the above, in the grounds of the writ petition, the petitioners have raised certain legal issues also. It is pointed out that the power exercised by the Government is ultra vires of the provisions of Section 4(2) of the Kerala Panchayat Raj Act. There was no proper consultation with the Panchayats and there should have been a two-way flow of information and opinion exchange as well as participation. It is pointed out that to have an effective and meaningful consultation, the point of view of one authority should be made known to the other and after consideration of the full facts, a decision must be taken. It is further pointed out that the civil rights of residents will be affected by the reorganisation.

5. The first respondent has filed a counter affidavit.

6. Heard learned Counsel for the petitioners, learned Govt. Pleader and learned Counsel appearing for Sreekrishnapuram Block Panchayat.

7. Learned Counsel for the petitioners raised contentions on various aspects. It is pointed out that the reorganisation cannot be justified and the difficulties of the people to reach the headquarters of the new Block Panchayat is a material aspect which was never considered. It is pointed out that the Committee of the existing Block Panchayat as well as that of the Grama Panchayat have passed resolutions objecting to the proposal.

8. Learned Govt. Pleader, by relying upon the averments in the counter affidavit, submitted that the Commissioner for Rural Development had submitted a report based on which a preliminary notification was issued and after taking the views of the Panchayat the present decision has been arrived at.

9. The scope of the consultation as envisaged in Section 4(2) of the Act and the requirements to have a meaningful consultation, have been considered by this Court in the common judgment in W.P.(C) No. 21166/2010 and connected cases, in respect of reorganisation of other Block Panchayats. The notifications herein are also common to those considered in the said cases and therefore it will be of advantage to refer to the findings therein. With regard to the requirements of a meaningful consultation, it was held in paragraphs 14 and 17 thus:

14. Herein, a dispute was also raised whether actually the Panchayats were consulted. What is communicated to the respective Village Panchayats and Block Panchayats is the copy of Ext.P1. The averments in the additional counter affidavit show that Ext.P1 was published in the Kerala Gazette Extra-ordinary No. 1282 dated 5.6.2010. The Government gave directions to the Commissioner for Rural Development to take immediate steps to make available the copies of the

Government Notification to all Block Panchayats wherein a change is proposed in the constituent Grama Panchayats in their jurisdiction and to all Grama Panchayats concerned and get the decisions of the concerned local bodies conveyed to the Government within the stipulated time. By letter No. 5060/DP4/09/CRD dated 9.6.2010 of the Commissioner for Rural Development, copies of the notification were e-mailed to the Secretaries of all Block Panchayats and instructed to bring the notification to the notice of the Block Panchayats and the Grama Panchayats in the Block Panchayat area where change is proposed in the constituent Grama Panchayat of the Block Panchayat and to give the objections/suggestions of the Panchayat to Local Self Government (EM) Department by 15.6.2010. Copy of the letter dated 9.6.2010 and the notification were also sent by post to all Block Panchayat Secretaries on 10.6.2010 and the same were published in the website also. It is further contended that for the last 3 - 4 years communications are being made by the Government/Head of the Departments and the Local Self Government Institutions through e-mail which is effective. It is further pointed out that all decisions/opinions conveyed by the Local Self Government Institutions concerned upto the date of hearing (25.6.2010) were taken into consideration by the Government also. The objections were disposed of as per G.O.(Ms) No. 1382010/LSGD dated 1.7.2010 and the final notification was issued on 2.7.2010 which was notified as S.R.O. No. 659/2010. It is evident from the same that the Government has forwarded the proposal to the Panchayats concerned for their opinions and suggestions and many of the Panchayats have forwarded their resolutions, of course, objecting to the same. Personal hearing was also extended, not individually but collectively on 25.6.2010.

17. The question was elaborately considered by the Supreme Court in Supreme Court Advocates-on-Record Association and another Vs. Union of India, , while interpreting Articles 124(2), 217(1), and 221(1) of the Constitution of India. The question arose in connection with the various principles governing the appointment of Judges in the Supreme Court and High Court and transfer of Judges/Chief Justices of High Courts. The dictum laid down by the Madras High Court in R. Pushpam and Anr. v. State of Madras AIR 1953 Mad 392 while considering the scope of the term "after consulting the Municipal Council" under the Madras District Municipalities Act, 1920, was approvingly referred to in para 124 of the judgment, which is reproduced below:

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It is evident that a formal compliance of the provision regarding consultation is not that is indicated in the provision. It was held that "the form is not material but the substance is important. It is necessary that the consultation shall be directed to the essential points and to the core of the subject involved in the discussions." These are important principles to be applied while considering the sufficiency of the consultation initiated by the Government herein also. Keeping in mind the above principles, the question whether the Government has properly

consulted the Panchayats and has considered the relevant materials projected by them in effecting diminution of the area of certain Block Panchayats, arises for consideration.

10. Herein also, the situation is identical as the same methods alone were employed and therefore the principle laid down therein will squarely apply herein also. In paragraphs 23, 24 and 25 of the above judgment, the lack of furnishing proper information to the Panchayats when the process of consultation was initiated, was considered and it has been laid down thus:

23. The notification Ext.P1 does not give any details with regard to the basis which was adopted by the Government in the matter. In the counter affidavit, it is pointed out that the move was initiated based on a report submitted by the Commissioner for Rural Development who submitted a detailed proposal in regard to the various Block Panchayats wherein the reorganisation of the Block Panchayats herein were also suggested. Learned Govt. Pleader placed before me for perusal copy of the report submitted to the Government along with a letter dated 16.7.2009. It is mentioned therein that since certain Grama Panchayats have been converted as Municipalities and certain Grama Panchayats have been added to some Municipalities, it necessitated the reconstitution of certain Block Panchayats and therefore reorganisation of certain other Grama Panchayats also were considered. Certain reasons have been pointed out for not initiating any proposal for reorganising all the Block Panchayats, based on population, area and number of Grama Panchayats. Importantly, it is mentioned in para 2 that based on the area, population and number of Grama Panchayats, it may not be possible to refix the geographical boundary of the Block Panchayats wherein the Block Panchayats have got office buildings and other infrastructural facilities. It is also mentioned that "there will be complaints if the reorganisation will cause difficulties for the people of the Grama Panchayats to reach the headquarters of the Block Panchayats." Even though the report contains the proposal in the draft form as now published as Ext.P1, the basic datas collected to justify the exclusion from the existing Block Panchayats and inclusion in different Block Panchayats, are not detailed in the report. It is not clear whether the difficulties of the people of the existing Grama Panchayats to reach the headquarters of the new Block Panchayat were considered at all while making this proposal. A reference to the notification Ext.P1 also shows that such informations as to why certain Panchayats are being excluded and added to other Block Panchayats, have not been detailed therein. The names of Block Panchayats in each district, names of Grama Panchayats to be added to them and the headquarters alone are mentioned in Ext.P1 also.

24. When we consider the sufficiency of the consultation initiated by the Government herein, in the light of the principles evolved by the Apex Court with regard to the process of consultation, it is evident that the details are lacking in Ext.P1 to initiate a meaningful consultation with the Panchayats concerned. They are not told as to the reasons which prompted the Government to exclude them

from the existing Block Panchayats and include in other Block Panchayats. Thus, even though in the counter affidavit it is mentioned that there was a report, the same obviously also lacks in the essential details. Nothing further is communicated to the Panchayats to engage them in a meaningful consultation. The time schedule is also worthy to be noticed. The preliminary notification is dated 5.6.2010; it was forwarded by letter dated 9.6.2010, inviting suggestions/opinions to reach the Government by 15.6.2010 and hearing was conducted on 25.6.2010 on the entire proposals. On 1.7.2010 an order was passed on the objections received and the final notification was issued on 2.7.2010. It was really done in a hasty manner. It is explained by the Government in the counter affidavit that the elections will have to be conducted immediately to constitute new Block Panchayats by 1.10.2010 and therefore the above time schedule was followed.

25. The counter affidavit in para 3, while adverting to the reasons for reorganisation of Block Panchayats, states as follows:

The Block Panchayats in the State were organised long time back and their size is uneven with varying number of Village Panchayats in each jurisdiction. Therefore, Government decided to reorganise them more rationally. In this context Government gave directions to the Commissioner for Rural Development to submit a detailed proposal for the geographic and administrative reorganisation of the Block Panchayats in the State in such a manner that the total number of Block Panchayats will remain at 152. Therefore, the essential question is whether the reorganisation is on a rational basis and whether the same has resulted in geographic and administrative reorganisation, even going by the basis mentioned as above. There cannot be any dispute that the Village Panchayats are the Local Self Government Institutions at the lowest level catering to the needs of villagers who are living in rural areas and who have got different avocations for their life. The objections raised by the respective Panchayats in this regard with regard to the difficulties which may have to be experienced by the people to reach the headquarters of the Block Panchayats to which they are sought to be included, cannot be said to be irrelevant at all. They are the most important and relevant factors in the light of the fact that the village Panchayats and Block Panchayats are to operate at the intermediate as well as village level.

11. This Court also relied upon the decision of the Apex Court in *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, wherein the various principles regarding reorganisation of Panchayats have been laid down. The relevant discussion in para 26 is the following:

The organisation of Village Panchayats and Block Panchayats therefore should be done in a rational basis which will have an administrative set up considering the geographical and administrative convenience also. That alone will suit the needs of the public. The Apex Court has laid emphasis on this aspect while considering

a similar issue in *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, . Of course, the challenge against the U.P. Panchayat Raj Act, 1947 and the various provisions therein and the delimitation process initiated was the subject matter of consideration. But while considering the importance of forming Village Panchayats on a rational basis and on various other aspects, it was held thus in para 33:

The need is to organise viable social, political, economic and administrative units of optimum size at the lowest level on a rational basis keeping in mind the size of population, the needs of social and economic development, availability of resources, transport and communication facilities, convenience of administration and other relevant factors.

Again, in para 52, various principles were reiterated to remind the State Government of its responsibilities which is in the following terms:

The State Government should bear it in mind that if and when the next regrouping of the villages and redetermination of the panchayat areas is undertaken, the authorities will have to give sufficient opportunity to the people of the areas concerned for raising the objections. This is with a view to remove their grievances, if any, with regard to the difficulties, inconveniences and hardships, likely neglect of their interests, domination of certain sections and forces, remoteness of the seat of administration, want of proper transport and communication facilities, etc.

Importantly, the Apex Court emphasised the various relevant factors including the remoteness of the seat of administration, want of proper transport and communication facilities, etc. in the said paragraph. This principle is of general application, evidently. Therefore, it is the responsibility of the Government to have a rational basis for forming the village panchayats and block panchayats considering these factors. The convenience of the administration and transport and communication facilities and the remoteness of the seat of administration are therefore, quite important for the people who are beneficiaries of the system of village and block panchayats. Mere formation of a Block Panchayat alone is not sufficient. There should be an integrated unit consisting of different Village Panchayats which can effectively communicate with the Block Panchayat in its headquarters and in turn people of such Village Panchayats also will have to get maximum opportunity to reach the seat of administration and remoteness of the seat of administration thus will lead to an irrational exercise. The re-organisation, if done ignoring these factors will result in an arbitrary exercise and without any application of mind to the relevant aspects.

Finally, it was held in paragraphs 27 and 28 thus:

27. Evidently, these principles, if applied to the fact situation herein, it cannot be said that the Government has kept in mind such principles in these cases thus resulting in an arbitrary and illegal exercise in finalising the proposals.

28. As already pointed out, as the principle of consultation itself indicates the communication of materials for a proper discussion between the two parties, the absence of the same herein, has really prejudiced the Panchayats and the people, evidently. Take for example, a Block Panchayat having six Village Panchayats, out of which one or two are excluded so as to include in another Block Panchayat. Why the Government has picked and chosen them for such exclusion and the reason as to why the other Grama Panchayats included in the existing Block Panchayat which may be lying nearer to the other proposed Block Panchayats, are not thought of, is an important question. The datas are absent in Ext.P1 and no reasons are forthcoming also. There is no case that such datas have been communicated to the Panchayats also.

Herein also, the situation is identical and same contentions have been reiterated in the counter affidavit. Therefore, the deficiencies pointed out therein will squarely apply to the facts of this case also.

12. Evidently, herein the important aspect pointed out by the petitioners as well as respondents 4 and 6, viz. Mannarkad Block Panchayat as well as Thachanattukara Grama Panchayat have not been considered at all while issuing the final notification. There is no dispute that the Headquarters of the Sreekrishnapuram Block Panchayat is at a distance of more than 20 kms. which fact is clearly admitted in paragraph 8 of counter affidavit filed by the first respondent, to the effect that "the Headquarters of Sreekrishnapuram Block Panchayat is Sreekrishnapuram which is only 20 to 22 kms. approximately from Thachanattukara Grama Panchayat." What is mentioned further is that Thachanattukara Grama Panchayat is an adjoining Panchayat to Sreekrishnapuram Block Panchayat. It is submitted by the learned Counsel for the petitioners that it is not an adjoining Panchayat. It is clear that the said Panchayat has been picked and chosen for inclusion in Sreekrishnapuram Block Panchayat without ascertaining various aspects as already pointed out. The fact that Mannarkad Block Panchayat and Thachanattukara Grama Panchayat have opposed this move, is also admitted in the counter affidavit. What is mentioned as a justification for reorgansiation is only that the Government have considered the objections and suggestions and a personal hearing was also conducted. Even though it is asserted by the Government in the counter affidavit that the decision to reorganise the Grama Panchayat was taken to have a geographic and administrative reorganisation, clearly the same is not given effect to when the final notification was issued as evident from the pleadings. Learned Govt. Pleader produced before me for perusal the order passed by the Government after hearing the objections in respect of the districts. With regard to Palakkad District, the objections raised by the petitioners and others in the hearing, are mentioned. The objections are common in nature, i.e. everybody had complained that the distance from Thachanattukara Grama Panchayat to Sreekrishnapuram will be more (around 25 kms.) and it will be disadvantageous to the people. The objections in respect of the various districts have been rejected in one paragraph, viz. para 3 on general terms. The objections in respect of each Block

Panchayats have not been separately considered or supported by reasons also. Therefore, it cannot be said that the decision has been arrived at with proper application of mind. It is not clear as to why Thachanattukara Grama Panchayat was picked and chosen and why the other nearby Panchayats, if any, to Sreekrishnapuram Block Panchayat were not considered at all. Even though learned Counsel appearing for Sreekrishnapuram Block Panchayat sought to justify the inclusion, they could not also throw any light on these aspects and it was submitted that they had no objection in the matter. Why they are also preferring this Panchayat, is not evident from their contentions also. The situation is similar to those considered in W.P.(C) No. 21166/2010 and connected cases. In para 37 of the judgment in W.P.(C) No. 21166/2010, it was held thus:

37. Therefore, as far as these cases are concerned, clearly it is a case of arbitrary exercise wherein certain Grama Panchayats have been picked up and chosen for exclusion from the existing Block Panchayats and sought to be included in other Block Panchayats. The same is without considering the loss of all round facilities for the people who are residing in the Village Panchayats close to the headquarters of the existing Block Panchayats and the difficulties they may have to experience if they are included in a far distant new Block Panchayat. There is no scientific study or consideration of geographic and administrative convenience preceding the reorganisation. The facts pointed out leads only to one conclusion that the assertion that the Government wanted to reorganise them on a rational basis, is clearly unsupportable. No rational basis has been projected or shown through and the materials are lacking in support of the same. Even though Section 4(2) of the Act confers power to reorganise Block Panchayats in view of the recent amendment, evidently such power cannot be exercised arbitrarily. Any decision of the Government thus tainted by arbitrariness and non application of mind will be invalid in law. It is now well settled by various decisions of the Apex Court and this Court that unreasonableness, irrationality and illegality will vitiate the decisions of the Government.

13. In that view of the matter, the writ petition is allowed. The impugned notifications as far as it concerns the inclusion of Thachanattukara Grama Panchayat in Sreekrishnapuram Block Panchayat, are quashed. The said Panchayat will be retained in Mannarkad Block Panchayat to which it was included as per the notification dated 22.4.1994. No costs.