

(1989) 05 KAR CK 0003
In the Karnataka High Court
Case No : W.P. No. 1930/1989

Ganapathy Subraya Bhat and Others

APPELLANT

Vs

Deputy Commissioner, Uttara Kannada and Another

RESPONDENT

Date of Decision : 30-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 4

Citation : (1989) 3 KarLJ 625

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

Judgement

Chandrakantaraj Urs, J.-Petitioners are residents of Honavar Taluk. It is alleged by them that the villages in which they reside in that Taluk have been added on to various Mandal Panchayats formed by the respondent-State Government in exercise of its power under Section 4(1) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983. They further allege that having regard to the backwardness of the villages in which they reside and other geophysical factors, there is an imperative need to reconstitute the group of villages into one single Mandal Panchayat so that they may develop better. In that circumstance, they also allege that they have made a representation to the then Minister incharge of Rural Development in the Government of Karnataka. That representation is produced along with the petition as Annexure-A. In that circumstance, the prayer made by the petitioners is for a writ of mandamus or other appropriate writ or order to the State Government to establish a Mandal Panchayat under the aforementioned Act.

2. Constitution of a Mandal Panchayat is controlled by the provisions contained in Section 4 read with Section 5 and other relevant sections. Certain guidelines are given in sub-section (1) of Section 4 for grouping the villages and constituting the Mandal Panchayat. The Deputy Commissioner of the District is authorised to put a proposal grouping certain villages into a panchayat or a single village into a panchayat if it qualifies to be a panchayat by itself. Such proposals should also

invite objections from the persons affected and thereafter considering the objections, if any received, the Deputy Commissioner may constitute and declare certain group of villages or avillage by itself to be a Mandal Panchayat. Admittedly that stage is over. The petitioners or any one of them did not raise any objection when the proposals were originally made by the Deputy Commissioner of Karwar in exercise of his power under sub-section (1) of Section 4 of the Act.

3. It is now, they have realised the need for regrouping themselves into one Mandal Panchayat for better development of the area. Therefore they made representation to the Government as well as filed the present writ petition seeking a mandamus to the Government to so regroup the villages. The power exercised by the State Government through the Deputy Commissioner under Section 4(1) and 4(2) are some what similar to the power exercised by the State Government under various Local Authorities Act grouping notified areas or municipalities or metropolitan areas, corporations etc. That power so exercised is a necessary pre-requisite to extend the provisions of the Act under which those areas, municipalities or corporations are formed.

4. Supreme Court in the case of *The Tulsipur Sugar Co. Ltd. v The Notified Area Committee, Tulsipur*, AIR 1980 SC 882, had occasion to examine whether making such a declaration of a notified area under the provisions of the U. P. Town Area Act required that persons affected must be heard mandatorily. In that connection, the Supreme Court ruled that declaration under Section 3 of the said U.P. Act was legislative in character and Section 3 of the said Act was in the nature of a conditional legislation and therefore the maxim "*audi alteram partem*" was not attracted by any necessary implication. The principle enunciated applies with equal force to the case on hand as well. This Court cannot compel the Government to do a thing which is in accordance with the legislation the Government has already done. Therefore, no further legal obligation or duty vests in the Government which may be commanded by this Court by a mandamus. Therefore, the prayer in the writ petition must necessarily be denied.

5. However, it was argued by the learned Counsel for petitioners that at least the Court should give a lesser relief by directing the Government to dispose of the representation made to the then Minister incharge of Rural Development. Unless the petitioners point out that they have a legal right to present such an application, it is difficult to issue a writ of mandamus to dispose of such an application. The Government is not duty bound to consider and dispose of all applications made by the individuals or a group of individuals. It has more things to do like collecting Revenue of State, provide for the citizens and their welfare. However, having regard to the allegations made by the petitioners and their desire to improve themselves from their backwardness, this Court does feel that the representation made to the then Minister of Rural Development must be duly considered by the Government and the persons who made representations informed of the reaction of the Government to their request as soon as possible.

Subject to the above observation, this writ petition is dismissed as not maintainable.

Writ petition dismissed.