

(2015) 03 BOM CK 0407

In the Bombay High Court

Case No : W.P. Nos. 9228, 9229, 7786, 9230 to 9238, 9562 to 9566, 9999, 11077, 11082, 11448 to 11451, 11490, 9594 to 9601, 9638 and 10640 of 2014

Gram Panchayat, Khatwani

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 4, 4(2), 4(b)
Constitution of India, 1950 — Article 243-G
Panchayats (Extension to Scheduled Areas) Act, 1996 — Section 4, 4(b)

Citation : (2015) 6 MhLj 339

Hon'ble Judges : R.M. Borde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : P.R. Katneshwarkar holding for A.G Magare, P.R. Patil, U.S. Patil, Ameya Sabnis holding for A.S. Savale and A.R. Sayed holding for S.P. Brahme, for the Appellant; A.V. Gondhalekar, K.M. Suryawanshi, M.A. Deshpande, AGPs and P.S. Patil, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Borde, J.—Heard. Rule. With the consent of the parties, petitions are taken up for final disposal at admission stage.

2. The grounds raised and the contentions put forth before this Court in all these petitions are identical and the challenge raised is also the same, as such, all the petitions are being taken up together and are being disposed of by common order.

3. Petitioners are objecting to Government Resolution dated 30-6-2014 directing division of villages in exercise of powers conferred under section 4 of the Bombay Village Panchayat Act and in consonance with Article 243-G of the Constitution of India. Consequent notification issued by the General Executive Officer, Zilla Parishad, Nandurbar on 28-8-2014 directing appointment of Administrator to

administer the newly formed Village Panchayat is also a matter of challenge.

4. Facts giving rise to Writ Petition No. 9228/2014 can be stated in nutshell as follows:

General election to group Gram Panchayat Khatwani was held in the month of June, 2011 under supervision and control of the State Election Commission. On declaration of result of the election in a meeting of newly elected body of Village Panchayat, the Sarpanch and Up-Sarpanch were elected for a tenure of five years. Village Panchayat Khatwani consists of four hamlets namely Jamli, Kubharkhan, British Ankushvihir and Khadke. It is the contention of petitioner that respondent No. 1-State, without following the procedure prescribed under section 4 of the Village Panchayat Act, proceeded to direct division of Village Panchayat Khatwani into two villages. Village Khatwani after its division consists of Jamli and Kubhar Khan hamlets whereas newly constituted Village Panchayat is named British Ankushvihir and it consists of another hamlet namely Khadke. Petitioner contends that there was no proposal forwarded by the State declaring its intention to divide village Khatwani into two villages nor there was any proper consultation with the Village Panchayat or the Panchayat Samiti and Standing Committee of the Zilla Parishad as mandated under section 4 of the Act. It is further contended that district Nandurbar is a scheduled area and the Provisions of the Panchayats (Extension of Scheduled Areas) Act, 1996 are applicable to the Panchayats included in the district. It is contended that provisions of the Act of 1996 have been breached while directing division of the Village Panchayat.

5. An affidavit-in-reply has been presented on behalf of respondent No. 2 wherein it has been contended that Gram Sabha was held in each of the villages and the announcement of holding of Gram Sabha was previously declared by beat of drums on three occasions in each of the villages. The Sarpanch of the respective villages held monthly meeting of the Panchayat on 14-8-2013 and unanimously passed resolution in favour of division of Village Panchayat. The Gram Sabha was also held on 15-8-2013 in each of the villages and a resolution in respect of division of Gram Panchayat was adopted unanimously in the Gram Sabha and no objections have been raised in that regard. It is further contended that respective Panchayat Samitis unanimously passed resolution in its monthly meeting and accepted the decision of the Village Panchayat. It is further contended that the Standing Committee of Zilla Parishad, Nandurbar also unanimously passed a resolution on the subject and there was no objection raised to the decision of the concerned Village Panchayat in respect of division of the village. The Standing Committee of Zilla Parishad also approved the resolution adopted by the Village Panchayat. It is thus contended that the provisions of section 4 of the act have been adhered to.

6. This Court directed respondents to file separate affidavit in each of the matters specifying therein compliance of requirements provided under section 4(2) of the Bombay Village Panchayat Act meaning thereby to submit details in respect of consultation with the Standing Committee, Gram Sabha and the

Panchayat Samiti concerned. The State Government was also called upon to place on record documents as to when demand was made for bifurcation of village, nature of such demand and particulars thereof. The State was also called upon to place on record material constituting consultation i.e. the resolution of the Gram Sabha, the Panchayat concerned, post demand and the resolution of the Standing Committee. The State Government has presented affidavit in each of the petitions complying with the directions issued by this Court.

7. Learned counsel for petitioner contends that section 4(2) of the Act contemplates that there shall be proposal for division of village and said proposal shall be placed before the concerned Village Panchayat and thereafter the Village Panchayat is expected to approve the same. It is further contended that there is requirement of consultation post demand with the Standing Committee and the Gram Sabha and Panchayat Samiti concerned. It is contended that no such tentative decision was forwarded to the Village Panchayat for its consideration and as such there is no compliance of section 4(2) of the Act. It is further contended relying upon the provisions of Panchayats (Extension of Scheduled Area) Act, 1996 that division of villages is in breach of section 4(b) of the said Act. Section 4 of the Act of 1996 provides thus:

4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:--

(a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

(c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;

(d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.

8. Petitioner contends that a village in a scheduled area shall ordinarily consist of habitation or group of habitation or hamlet or group of hamlets comprising a community and managing its affairs in accordance with its traditions and customs. It is contended that the villages formed after bifurcation are not a homogeneous units and the said villages do not consist of members comprising a community and managing its affairs in accordance with its traditions and customs. It is contended that so far as village Khatwani is concerned, bifurcation made is in violation of section 4(b) of the Act since one of the hamlets consist of a totally different tribal group and the said tribal group cannot assimilate with

the other tribal community. It is further contended that as a result of bifurcation the village community is not in a position to preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.

9. Having heard arguments advanced by respective parties, it is noticed that in almost all cases there was a demand by the village community for making division of the village. The demand was tendered in writing to the concerned Village Panchayat which was forwarded to the Panchayat Samiti and Zilla Parishad. Subsequent to the demand made by villagers, meeting of Gram Sabha in each of the villages was convened. Notice of meeting of Gram Sabha was given by beat of drums in each of the villages well in advance before the meeting. A day prior to Gram Sabha meeting, the Village Panchayat in its monthly meeting held under the chairmanship of Sarpanch of each villages, adopted a resolution approving division of Village Panchayat. The meeting of Gram Sabha convened on the next day also adopted the resolution in respect of division of villages. The proposal for division of villages was thereafter forwarded to the concerned Panchayat Samiti which accorded its approval and thereafter said proposal has also been approved by the Standing Committee of the Zilla Parishad. Record in respect of consultation with the concerned Village Panchayat, Gram Sabha, Panchayat Samiti as well as Standing Committee of Zilla Parishad is placed on record in almost all the petitions. It is thus observed that the procedure prescribed under section 4(2) of the act has been substantially observed and there is no breach warranting quashment of the decision in respect of bifurcation of Village Panchayat.

10. Reliance is placed by petitioners on the judgment in the matter of The Village Grampanchayat and Others Vs. The State of Maharashtra and Others, . In the reported matter, there was no consultation with the Standing committee of Zilla Parishad and as such the resolution directing bifurcation of village was quashed by the Division Bench. In the instant matter, it is noticed that there is compliance of requirement of section 4 in respect of consultation with the Gram Sabha, Panchayat Samiti as well as Standing Committee of the Zilla Parishad.

11. Referring to the decision in the matter of Ashok Ganapat Jadhav and Another Vs. State Election Commission and Others, , it is contended that there is no proper consultation and no opportunity of hearing is given to the villagers of concerned village and as such, there is a breach of observance of principles of natural justice which is bound to result in invalidation of the action. The Division Bench of this Court has referred to the judgment of the Supreme Court in the matter of Baldev Singh and Others Vs. State of Himachal Pradesh and Others, in paragraph No. 10 of the judgment wherein it has been observed thus:

"We accept the submission on behalf of the appellants that before the notified area was constituted in terms of section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the

views of the residents. Denial of such an opportunity is not in consonance with the scheme of the Rule of Law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way."

In paragraph No. 13 of the judgment the Division Bench as observed thus:

13. By now it is well settled in law that after introduction of Part DC in the Constitution and the consequent amendments to the provisions of section 4 of the Village Panchayats Act, an opportunity of hearing prior to the delimitation order is passed, is mandatory and the order to be passed by the State Government for delimiting the areas of a Village Panchayat or separating a group Gram Panchayat into two Village Panchayats mandate a prior opportunity of hearing to the village residents in keeping with the rule of audi alteram partem. Even the language of the amended provisions of section 4 of the Act is distinctly different from the old provisions and the amended provisions reflect the Constitutional mandate so as to meet the aspirations and ambitions of the villagers. A village is a community which has its own rights, privileges, aspirations, obligations and responsibilities etc., and, therefore, it would not be sufficient to consult only the Village Panchayat or a Committee of the Village Panchayat before delimiting the village areas. What is explicit in the constitutional mandate and the provisions of section 4 of the Act is the mandatory requirement of the villagers being heard before such an order of delimiting is passed by the Government. This opportunity of hearing may be by way of displaying notice on the village Chawdi/Panchayat or any place prominent in the respective wards and/or by giving a public notice by beat of drums and it may not be necessary to give individual notice of hearing to every villagers. So long as the mode of giving notice to all the villagers by way of publication, the announcement by beat of drums etc., it followed and they are called upon to put up their say on the proposal of delimitation, the principles of natural justice would be met.

In the instant matter, it is noticed that an ample opportunity has been given to the villagers to put forth their objections. There was declaration in the village preceding holding of Gram Sabha by beat of drums and the Gram Sabha was actually held and resolution was adopted therein supporting the decision of bifurcation of village. The law does not contemplate individual notice of hearing to every villager nor there is requirement of providing for an opportunity to make oral submissions before rendering any decision. It is required to be noticed that there was a demand by the villagers themselves and post demand, there is a decision by the concerned Gram Sabha in favour of division of Village Panchayat. The decision of the Village Panchayat has also been approved in the meeting of the concerned Gram Panchayat and the said decision which was forwarded later on to the Panchayat Samiti and the Standing Committee and has also received approval of both the local authorities. Thus, there is substantial compliance of provisions of section 4(2) of the Act.

12. The judgment delivered by the Full Bench of Gujarat High Court in the matter of Pruthvisinh Amarsinh Chauhan Vs. K.D. Rawat or his Successor in Office Secretary, has been relied upon to contend that the statute requires an authority to consult before taking action regarding bifurcation of Panchayats, the consultation should not be a mere formality, but must be genuine and meaningful, then only the object of incorporation of this cause in the statute by the makers of law would be fulfilled. In the instant matter, the decision of bifurcation of Village Panchayat is in adherence to section 4(2) of the act and since it is noticed that there was a demand by the concerned villagers themselves, the contention raised by petitioner that consultation must be proceeded by the tentative decision of the Government holds no water.

13. So far as objection raised by petitioner in respect of nonobservance of provisions of the Act of 1996 is concerned, there is no material brought on record to demonstrate that by virtue of bifurcation of the villages a group of hamlets comprising of different communities have been compulsorily brought together. The provisions of section 4(b) of PESA Act direct that the village shall ordinarily consist of habitation or group of habitation or hamlets or group of hamlets comprising a community and managing its affairs in accordance with its traditions and customs. There is a mandate to the State," while constituting a village, to ordinarily ensure compliance as suggested under section 4(b). The grounds raised by petitioner for canvassing that the decision of the State Government is violative on account of nonobservance of directives contained in section 4(b) of the Act cannot necessarily form ground for vitiating the decision taken by the State Government in adherence to the provisions of section 4(2) of the Bombay Village Panchayat Act, 1958. As has been stated above, all the petitions listed before us arise out of similar set of facts and as such, all the petitions deserve to be disposed of in view of reasons set out above. In our considered view, the decision taken by the State Government directing bifurcation of the villages in Nandurbar district cannot be faulted. All the petitions are devoid of substance hence stand dismissed. Rule discharged. There shall be no order as to costs.