

(2004) 06 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 1823 of 1989

Gram Sudhar Samiti

APPELLANT

Vs

Panchayat and Others

RESPONDENT

Date of Decision : 11-06-2004

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 4(2)

Citation : (2004) 6 BomCR 739 : (2004) 4 MhLj 309

Hon'ble Judges : S. Radhakrishnan, J;K.J. Rohee, J

Bench : Division Bench

Advocate : S.W. Ghate, for the Appellant; T.D. Khade, Assistant Government Pleader, Advocate, for the Respondent

Judgement

S. Radhakrishnan, J.—By this petition, the petitioner Gram sudhar Samiti, Mahadulla, Tahsil - Kamptee, District - Nagpur through its President Shri Ramkrishana Dhengre and its Secretary Shri Madhukar Dhengre are challenging basically the Notification dated 18th June, 1986 which was published in the Maharashtra Government Gazette on 31st July, 1986. It appears that by the aforesaid Notification, an area approximately 92.34 hectors, which is a part of Mahadulla village, has been now carved out and annexed to Koradi village.

2. The petitioner contends that a substantial portion of their village has been carved out and has been annexed to Koradi village which has caused serious hardship to the villagers of that area. The learned counsel for the petitioner pointed out the provisions of the Bombay Village Panchayats Act, 1958, specially Section 4(2) in that behalf. Section 4(2) of the Bombay Village Panchayats Act, 1958 reads as under :

Section 4 : Declaration of village. -

(1).....

(2) Where the circumstances so require to include or exclude any local area from the local area of a village to or alter the limits of a village or that a local area

shall cease to be a village, then the notification issued in the like manner after consultation with the Standing Committee and the panchayat concerned, at any time, may provide to --

(a) include within, or exclude from any village, any local area or otherwise alter the limits of any village, or

(b) declare that any local area shall cease to be a village; and thereupon the local area shall be so included or excluded, or the limits of the village so altered, or, as the case may be, the local area shall cease to be a village.

3. The learned counsel for the petitioner emphasised that as per Section 4(2) of the Bombay Village Panchayats Act, 1958, there is a mandatory obligation of consultation with the Standing Committee and the panchayat before any notification is issued before including or excluding any local area from the local area of a village to or alter the limits of a village. The learned counsel for the petitioner brought to our notice that the aforesaid notification dated 18th of June, 1986 which was published on Maharashtra Government Gazette on 31st of July, 1986 only mentions with regard to general objections, if any, may be raised by the villagers. The said notification does not at all in any manner indicate that the village panchayat was consulted with any manner whatsoever with regard to the aforesaid carving out of 92.34 hectors of land from Mahadulla village. The learned counsel for the petitioner strongly contended that before any area is excluded from any village, the concerned authority ought to have consulted the village Panchayat and its members- The said notification does not in any manner indicate that such a consultation had taken place and it is the case of the petitioner that no such consultation was ever done in this regard. The learned counsel for the petitioner pointed out that at the relevant time when the notification was issued, there was an Administrator appointed with regard of the said panchayat being respondent No. 1 herein.

4. Unfortunately, respondent No. 1 has not filed any affidavit disputing the contention that there was no consultation of the Village Panchayat before issuing of the aforesaid notification. The only affidavit which has been filed in the above matter is on behalf of respondent No. 2 The Divisional Commissioner, Nagpur Division, Nagpur dated 23rd June, 1990. In the said affidavit also, there is absolutely no reference as to any such consultation of the Village Panchayat or its members was made before issuance of the impugned notification.

5. The learned AGP appearing on behalf of respondent Nos. 2 and 3 is also unable to point out from any record of any such prior consultation with the Village Panchayat before issuance of such a notification.

6. The learned counsel appearing on behalf of the petitioner also brought to our notice a Division Bench judgment of our High Court in Village Panchayat, Dharna Wadhona Buzruk through Sitaram Lachhiram Apselwar and Ors. v. Commissioner, Nagpur Division and Ors. 1967 M.L.J. 354. In the said judgment in an almost similar state of affairs, the Division Bench has in an unequivocal term has held

that such a consultation is mandatory and if there was no consultation said notification is liable to be quashed.

7. In that behalf, paragraph 15 of the above judgment would be relevant, which reads as under :

"The Panchayat concerned which ought to be consulted is the Panchayat as constituted on the date the decision is required to be taken by the first respondent. u/s 9 of the Bombay Village Panchayats Act, the Panchayat is made a corporate body; but u/s 10 what shall comprise or consist of the panchayat is provided, and u/s 10(1)(a) a panchayat shall consist of such number of members as the Collector may determine. So all members of the panchayat are a vital and integral part of the panchayat itself. When any action is proposed to be taken u/s 4(2), it has its impact on the status of the members constituting the panchayat. If for nothing else, at least in obedience to the well accepted principles of natural justice, the members, who constitute the panchayat and are affected by the action, have a right to be consulted. Consulting the panchayat does not mean consulting office-bearers or any selected representative, but the panchayat as a whole comprising of totality of its membership. An opportunity must, therefore, be given to all the members comprised in the panchayat to express their opinion with respect to the proposal initiated by the First respondent u/s 4(2) of the Bombay Village Panchayats Act. If that has not been done and we must observe in this case that, that is not complied with in this case, then an action taken u/s 4(2) is liable to be struck down as an exercise of power without due compliance with the requirement of the section itself."

8. Under these circumstances, Rule is made absolute in terms of prayer Clause (iii) with costs.