

(1986) 03 KAR CK 0014
In the Karnataka High Court
Case No : W.P. No. 5556 of 1986

Kale Gowda, G. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-03-1986

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 4(3)

Citation : (1986) 2 KarLJ 252

Hon'ble Judges : Chandrakantharaj Urs, J

Judgement

1. For the reasons I have given in Writ Petition No. 5433 of 1986, the challenge made to validity of sub-section (3) of Section 4 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayaths and Nyaya Panchayat Act, 1983, does not survive for consideration.

2. It was argued by Mr Papanna, learned counsel for the petitioners that the Divisional Commissioner has erred in law in revising the order of the Deputy Commissioner without affording an opportunity to the petitioner to be heard. He has drawn the attention of the Court to the language of sub-section (3) of Section 4 of the Act. The power conferred on the Divisional Commissioner under sub-section (3) of Section 4 of the Act is the power of revision and one must understand it as such taking judicial notice of the word employed, namely, the word "revision".

3. The person who made the order is certainly a person concerned, i.e., in this case under Section 4(1) of the Act, the Deputy Commissioner concerned. Power of revision under sub-section (1) of Section 4 of the Act is both suo moto and on the application of persons aggrieved by the order of the Deputy Commissioner made under Section 4(1) of the Act. Similarly, when that power is sought to be exercised on the motion of persons aggrieved by the order of the Deputy Commissioner, then, the Deputy Commissioner alone will be the party concerned along with those who have moved the Divisional Commissioner.

4. If, on hearing the application made to the Divisional Commissioner like, say by residents of the village which has been chosen as the headquarters by the Deputy Commissioner, the other villagers in the Mandal may also intervene, if they choose. If they choose to intervene, they have, by their own act, become persons concerned and, therefore, they must be heard. If they did not seek to intervene, then, they cannot be said to be concerned parties. If this is borne in mind, then, the argument must necessarily fail.

5. It was next argued by Mr. Papanna that hearing of the affected persons is mandatory under sub-section (3) of Section 4 of the Act, even though the Legislature had not provided for the same. Having regard to the object of the Act, issuance of a public notice to the affected villagers cannot be implied and, therefore, failure to issue such a public notice would not render the order of the Divisional Commissioner, made in revision, an order without affording an opportunity to the concerned persons and, therefore, bad.

6. In certain matters, if law does not provide for hearing, it must be understood. Legislature did not intend to provide for the hearing. There is no room for inference, there should be a public notice.

7. A decided case of the Supreme Court throwing some light on this aspect of the matter has been brought to my notice. In the case of *Tulsipur Sugar Co. v. Notified Area, Tulsipur*, (A.I.R. 1980 Supreme Court 882), the Division Bench of that Court, construing Section 3 of the Act which provided for declaration for any area as town area, held:

"Section 3 does not provide that the State Govt. should give previous publicity to its proposal to declare any area as a town area and should make such declaration after taking into consideration any representation or objection filed in that behalf by the members of the public. Nor Section 3 of the Act by necessary implication imposes a duty on the State Govt. to follow the principles of natural justice i.e., to give publicity to its proposal to declare any area as a town area and to decide the question whether any declaration under Section 3 of the Act should be made or not after taking into consideration the representations or objections submitted by the members of the public in that regard. Therefore, the failure to comply with such procedure would not invalidate any declaration made under Section 3."

The Court has further held:

"The power of the State Govt. to make a declaration under Sec. 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation.. The maxim *audi alteram partem*" does not become applicable to the case by necessary implication."

8. In view of the elucidation of law on the subject very akin and similar to points contemplated by a declaration of Mandal and its head-quarters under the Act,

the last argument of Mr. Papanna also must fail.

9. Another argument which was pressed into service was that there has been change or modification in the order of the Deputy Commissioner beyond 30 days and, therefore, contrary to the limitation imposed by Section 3 of the Act. I do not find that there is any merit in this argument either Limitation imposed governs the exercise of power but not duration of the pendency of the proceeding commenced either suo moto or on the application of an aggrieved person.

10. For the above reasons, there is no merit in this writ petition as well.

11. Mr. Papanna also contended that 10 other villagers had made representation to the Divisional Commissioner and they have not been heard. I see no such reference in the order of the Divisional Commissioner. There is no evidence placed before this Court that such a representation was made at all to the Divisional Commissioner. Therefore, this Court cannot rely upon such submissions to come to the conclusion that such a representation was made before the Divisional Commissioner.

12. For the above reasons, this writ petition is liable to be dismissed. It is so dismissed.