

**(1982) 07 KAR CK 0021**  
**In the Karnataka High Court**  
**Case No : W.P. 21979/82**

Krishnappa S. and Ors

APPELLANT

Vs

Divisional Commissioner, Mysore and Others

RESPONDENT

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**Date of Decision :** 14-07-1982

**Acts Referred:**

Constitution of India, 1950 — Article 226

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 8

**Citation :** (1982) 2 KarLJ 577

**Hon'ble Judges :** K. S. Puttaswamy, J

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**Judgement**

1. In this petition under Art. 226 of the Constitution, the petitioners have challenged the Notfn. No. VPC MSC 126/81-82 dt. 18-6-1982 (Annexure-B) issued by the Deputy Commissioner, Mandya Dist., Mandya (hereinafter referred to as the DC).

2. Prior to 26-11-1981, the Revenue Villages of Annur, Albuhanahalli, Karkahalli, Devarahalli and Mellahalli of Maddur Taluk, Mandya Dist. formed part of either Manager or Annur Group Village Panchayats constituted and functioning under the provisions of the Kar. Village Panchayats and Local Boards Act, 1959 (hereinafter referred to as "the Act"). In Notfn. No. VPC CR 56/81 82 dt. 3-12-1981 the Divisional Commissioner, Mysore (hereinafter referred to as "the Commissioner") exercising the powers conferred on him by the Act proposed to constitute the the said revenue villages into a separate Town Panchayat called Bharathinagar Town Panchayat (hereinafter referred to as "the Panchayat") with head quarters at Kalamuddanadoddi and called for representation and objections to the same. On a consideration of the representation and objection filed thereto, the Commissioner in his Notfn. No. VPC CR 56/81 82 At. 18-1-1982 (published in Kar. Gazette dt. 4-2-1982) approved his earlier proposal and established a new Town Panchayat consisting of the said villages.

3. On a suggestion made by the DC on 25-2-1982 the Commissioner by his Notfn. No. VPC CR 56/81 82, dt. 13-4-1982 (Annexure-A) appointed the Block

Development Officer, Maddur Taluk (hereinafter referred to as "the BDO") as the Administrator of the Panchayat for a period of one year or till elections are held whichever is earlier. On the issue of the Notfn. the BDO assumed charge as the Administrator of the Panchayat and was discharging his duties thereto.

4. On 15-6-1982 the Secretary to Government, Rural Development and Cooperation Department, addressed a demiofficial letter to the DC suggesting the constitution of an Administrative Committee to the Panchayat consisting of the persons mentioned therein. The relevant portions of that letter that appear to have been received by the DC on 18-6-1982 read thus:

Kar. Government Secretariat,

Vidhana Soudha, Bangalore-I,

Dt. 15th June, 1982.

B.K. Battacharya, Secretary to Govt.

Rural Dev. &Co-opn., Dept.

DO No. RDC 151 VAD 82.

Dear Sri Madarkal,

Sub: Constitution of Town Panchayat at KM Doddi, Maddur Taluk.

As per Notfn. No. VPC CR 56/81 82 dt. 18-1-1982 the Divisional Commissioner, Mysore a new Town Panchayat called "Bharathi Town Panchayat" has been constituted.

"The Government desires that an Administrative Committee under sub-sec. (1) of S. 8 of the Kar. Village Panchayats and Local Boards Act, 1959 may be constituted until election takes place. While constituting the Administrative Committee, the names of the following persons to serve on the committee may be taken into consideration giving adequate representation to the SC/ST and women in the Committee:

1. Sri S. Sidde Gowda, son of Sidde

Gowda, Ex-President, TDB, Maddur

-President.

2. Sri Krishnappa, son of Chikathama-

iah, KM Doddi, Maddur Taluk

Vice-President.

x x x x

These names have the approval of the Chief Minister.

With regards. Yours Sincerely (Sd/-)

Sri Narasingh Rao Madarkal,

Dy. Commr., Mandya"

On the same day, the DC purporting to exercise the powers conferred on him by S. 8 (1) of the Act has appointed an Administrative Committee to the said Panchayat consisting of 19 persons, who are arrayed as respondents 4 to 22 for a period of one year or till elections are held whichever is earlier. Except for two changes or so, the DC has appointed the very persons in the capacities suggested by Government.

5. On all hands it is admitted and that is also apparent that the Notfn. issued by the DC was published in the Gazette only on 1st July, 1982 and not before. But, even before that, the DC appears to have forwarded a copy of the same to the Administrator who one receipt of the same, on the very next day i.e., on 19-6-1982, handed over charge of his office to the President of the Administrative Committee appointed by the DC.

6. All the petitioners are residents of the Panchayat, Petitioner No. 1 was also a Chairman of the Annur Village Panchayat before its dissolution.

7. The petitioners have urged that the DC has illegally and improperly revoked a lawful order made by his superior officer viz., the Commissioner, that was in force.

Secondly, the petitioners have urged that it was not open to the DC to appoint an Administrative Committee under S. 8 of the Act, when none of the circumstances mentioned in that section existed. Lastly, the petitioners having regard to the facts that came to light at the hearing, have urged that the DC had not really exercised his power but has blindly acted at the behest of Government.

8. In a common return, respondents 1 and 3 viz., the Commissioner and the DC while justifying the impugned notification, at the threshold have urged that the petitioners have no locus standi to challenge the same. Secondly, these respondents have urged that on the establishment of a Panchayat by the Commissioner, the power conferred on the DC to constitute that Panchayat by appointing an Administrator or an Administrative Committee was in no way curtailed or restricted and in that view the DC has legally appointed the Administrative Committee. Thirdly, these respondents have urged that the impugned notification has not the effect of revoking the notification impugned by the Commissioner. Lastly they have asserted that the notification has not been issued mechanically or at the behest of the Minister for Forest.

9. Respondents 4 to 22 have filed their separate returns supporting respondents 1 and 3. These respondents claim that the impugned notification, far from affecting the interests of the petitioners or the public, has advanced their interests in providing a near democratic institution for looking after their

interests.

10. Before examining the contentions urged for the petitioners, it is necessary to examine two preliminary objections urged for the respondents, which, if accepted, would make it unnecessary to examine the merits.

11. Sriyuths V.C. Brahmarayappa, learned Government Advocate appearing for respondents 1 and 3 and H.K. Vasudeva Reddy, learned counsel appearing for respondents 4 to 22, urged that the petitioners have no locus standi to challenge the impugned notification and this writ petition should, therefore, be dismissed without examining the merits. In support of their contention, learned counsel for the respondents strongly relied on the latest ruling of the Supreme Court in *S.P. Gupta v. President of India*, AIR 1982 SC 149. popularly called as Judges case.

12. An Administrative Committee appointed by the DC which takes over the reins of the Panchayat in place of an Administrator, undoubtedly affects the interests of all the residents of the Panchayat. Hence, the petitioners who would be affected by the same are "aggrieved persons" applying the traditional tests in determining as to who is an aggrieved person to maintain a petition under Art. 226 of the Constitution. On this conclusion alone, this contention of the respondents has no merits.

13. Assuming that the petitioners have not suffered a personal injury, even then, on the application of the principles of public interest litigation, elaborately dealt and explained in the Judges case, the petitioners have sufficient interest to challenge the notification. In order to determine the same, a detailed reference to the several passages in the Judges case is hardly necessary. In my view, the ratio in the Judges case, far from supporting the case of the respondents, supports the case of the petitioners. I am, therefore, of the opinion that there is no merit in this contention of the respondents and I reject the same.

14. Sri Reddy maintained that the impugned notification, far from affecting the interests of the petitioner, has conferred greater benefits on them and other residents, in that the Administrative Committee consisting of persons eligible to be elected as members of the Panchayat, who are genuinely interested in the affairs of the Panchayat, will manage the affairs rather than an over-burdened Administrator whose office is situated at Maddur Town.

15. In my view, this argument of Sri Reddy, though attractive at first sight, is devoid of merit.

16. The management of the Panchayat by an administrator or an Administrative Committee will not be one and the same. An Administrator who is a permanent civil servant of the State can be expected to be more objective than an Administrative Committee consisting of the local representatives of the area. If the local representatives are duly elected, they have undoubtedly the right to manage the affairs of the Panchayat. But, that is not the position here.

17. A group of persons that are not the elected representatives, but imposed by

the DC can hardly claim that they are the local representatives. The fact that the petitioners did not take any objection to the appointment of an Administrator by the Commissioner, which undoubtedly does not suffer from any legal infirmity, does not necessarily mean that they cannot take objection to an Administrative Committee appointed by the DC in the impugned notification. For these reasons, I see no merit in this contention of Sri Reddy and I reject the same.

18. As I have rejected the preliminary contentions urged for the respondents, it is now necessary to examine the contentions urged by Sri Mohandas N. Hegde, learned counsel for the petitioners.

19. Sri Hegde contends that the DC in appointing an Administrative Committee, in law and fact, has revoked a lawful order made by the Commissioner who is his superior and the same was impermissible on any principle of law.

20. Sriyuths Brahmarayappa and Reddy urged that the order made by the DC has not the effect of revoking the order made by the Commissioner.

21. As noticed earlier, nobody had taken exception to the order made by the Commissioner. Learned counsel for the respondents also did not take the stand that the Commissioner had no jurisdiction and power to make his order dt. 13-4-1982.

22. The order made by the Commissioner, without any doubt, was made by a superior officer or authority and was in force on the day the DC. made his order. Before the DC made his order, the Commissioner had not revoked his order and it is not the case of the respondents that that order had created a vacuum in the administration of the Panchayat.

23. Both the orders cannot also stand together. Any one of the orders only can be and has to be in force. The later order made by the DC has necessarily the effect of revoking the earlier order made by the Commissioner.

24. When a lawful order made by a superior officer or authority is in force, in my considered view, it is against all principles of law for a subordinate officer or authority to undo the same. Any such attempt by a subordinate officer or authority besides being fraught with grave dangers will strike at the very root of hierarchy of administration, efficacy of orders made by superior officers or authorities and the rule of law in the Country. A moment's reflection by the DC would have convinced him that he was treading on a dangerous ground and was undoing a lawful order made by his superior that did not suffer from any illegality or impropriety. In my view, the order made by the DC is destructive of the very administrative system deriving its powers from the Constitution and the laws made thereto. I have, therefore, no hesitation in holding that the order made by the DC opposed to all principles of law and propriety is liable to be struck down. On this very short ground, the petitioners are entitled to succeed. Hence, it is not very necessary to examine the other contentions. But, as my order is subject to appeal, I propose to examine them also.

23. Sri Hegde contends that it was not open to the DC to appoint an Administrative Committee in the absence of any of the circumstances under S. 8 of the Act and that too without deciding the number of members of the Panchayat under S. 3(1) of the Act.

26. Sriyuths Brahmarayappa and Reddy urged that the Commissioner had only established the Panchayat and its constitution could be made by the DC, either by appointing an Administrator or Administrative Committee.

27. The Commissioner had appointed the Administrator for a period of one year or till the elections are held to the Panchayat, whichever is earlier. Both on principle as also the declaration made in S. 8 (4) of the Act, that order has necessarily to be treated as constituting the Panchayat till the elections are held.

28. The order dt. 13-4-1982 of the Commissioner provided that the Administrator will continue for a period of one year or till the elections are held which ever is earlier. But, so far as holding elections, the order made by the Commissioner or the other provisions of the Act, did not prevent the DC from taking all necessary steps in that behalf and hold elections to the Panchayat and see that the duly elected representatives take over the reins of the Panchayat. On the very terms of the order of the Commissioner as also under the Act, the DC was expected to take all necessary steps in that behalf. Without doing what was expected of him by the order of the Commissioner and the Act, the DC without any reflection, made the impugned order.

29. The word "constituted" occurring in S. 91 (b) of the Act under which provision the Commissioner had appointed the Administrator, cannot be construed as empowering the DC to appoint an Administrative Committee or an Administrator under S. 8 of the Act, but should be so construed as empowering the DC to disrupt its constitution only by holding elections to the Panchayat and not otherwise. The word "constituted" occurring in Ss. 5, 8 and 91 (b) of the Act, cannot be construed as conferring power to undo what had been done by the Commissioner.

30. S. 8(1) of the Act that is material reads thus:

"If the DC is satisfied that a Panchayat of a village immediately after the establishment of such Panchayat cannot be constituted by reason of any difficulty in holding an election of the members of the Panchayat or failure to elect such members of the Panchayat or for any other sufficient reason whatsoever, or if at any general election to a Panchayat no member is elected, or if the term of of the outgoing members of the Panchayat has expired and it has not been possible to complete the general election to the Panchayat before the expiry of the term or if all the members have resigned or their seats have become vacant, the DC shall by notification either- (i) appoint an Administrative Committee consisting of persons qualified to be elected, the number of such persons being equal to the number of members determined under sub-sec. (1) of S. 5; or (ii) appoint an Administrator".

This section empowers the DC to appoint an Administrative Committee or an Administrator in certain specified circumstances and not in all circumstances. The power under S. 8 can be exercised only if any one of the circumstances exist and not otherwise. Before exercising his power under this provision, the DC must genuinely apply his mind and find in his order itself, at least very briefly, that one or the other of the circumstances exist and, therefore, he is exercising the power conferred by S. 8 of the Act. The satisfaction must be of the DC himself and that satisfaction cannot be exercised mechanically or blindly at the behest of an outside authority, however high it may be.

31. The situations or circumstances that are expressly contemplated by S. 8 (1) of the Act are: (i) that immediately after the establishment of a Panchayat the same cannot be constituted by reason of any difficulty in holding an election to the Panchayat; (ii) or failure of the electors to elect members of the Panchayat; (iii) or at a general election to a Panchayat no member is elected; (iv) or the term of the outgoing members is due to expire or has expired and it has not been possible to complete the general elections to the Panchayat before the expiry of the term; (v) that all the members of the Panchayat have resigned and (vi) or their seats have become vacant.

32. The words "or for any other sufficient reason whatsoever" occurring in the middle of the provision, somewhat inaptly, applying the rule of ejusdem generis, should only be read as analogous to any of the preceding factors or causes or at any rate the factors or causes immediately preceding those terms and cannot be read as conferring power on the DC to appoint an Administrative Committee or an Administrator in any and every circumstance and at his whim and fancy.

33. An examination of all the facts and circumstances noticed earlier show that the DC has appointed the Administrative Committee for purpose not authorised by S. 8 of the Act, but almost whimsically at the behest of Government. From this it follows that the order made by the DC is wholly unauthorised and illegal.

34. Another disturbing feature of this case, to which it is necessary to make a reference, is this. While noticing the facts of the case, I have adverted to a letter written on 15-6-1982 by the Secretary to Government, Rural Development and Co-operation Department, on receipt of which the DC virtually adopted the same, except for two names and issued the notification without any loss of time. In his letter No. VPC. MSC. 126/81 82 dt. 18-6-1982 addressed to the Secretary to Government, Rural Development and Cooperation Department, he has faithfully stated that he has issued the impugned notification as per his instructions.

35. A reading of the letter dt. 15-6-82 addressed by the Secretary to Government and the reply by the DC, leave no doubt that he has not really applied his mind and has mechanically issued the notification, hardly realising that he was undoing what had been done by the Commissioner. A reading of these two letters and the other papers clearly reveal that the DC has not really applied his mind to the facts and circumstances of the case that call for exercise

of his power under S. 8 of the Act. S. 196 of the Act which confers power of control on Government cannot be read as enabling it to instruct the DC to make an appointment of an Administrative Committee in derogation of a lawful order that was in force. For these reasons, also the order of the DC cannot be allowed to stand.

36. Last, but not least, is the manner in which the charge has been handed over by the Administrator and the charge has been assumed by the Administrative Committee call for notice.

37. An Administrative Committee is appointed only by a notification issued by the DC. The word "notification" is defined in S. 2 (2) of the Act, according to which the same is required to be published in the official gazette.

38. Earlier, I have noticed that the impugned notification issued by the DC on 18-6-1982 was published in the Gazette dt. 1st July, 1982 only and not earlier.

39. Before the publication of the notification in the Gazette, the notification had no legal effect and, therefore, it was not open to the lawfully appointed Administrator to hand I over charge or for the Administrative Committee to take charge on 19-6-1982. I am distressed at the unseemly haste with which the DC forwarded a copy of his notification to the Administrator, the Administrator handing over charge and the Administrative Committee taking charge on 19-6-1982. I have alluded to this with the hope that atleast in future the DC will avoid such ugly situations.

40. As I have reached the conclusion that the impugned notification is illegal and the Administrator appointed by the Commissioner is legal and valid, it necessarily follows that that Administrator has to continue and the Administrative Committee that has taken charge from him on 19-6-1982 should hand over charge and cease to function as an Administrative Committee.

41. In the light of my above discussion, I make the following orders and directions:

(a) I quash the impugned notification.

(b) I direct the continuance of the Administrator appointed by the Divisional Commissioner for the remaining period for which he had been appointed and the President of the Administrative Committee-respondent No. 4 to hand over charge of the Panchayat to that Administrator forthwith.

42. Rule issued is made absolute with costs Advocate's fee Rs. 100.

43. Let copies of this order be communicated to respondents 1 and 3, the Block Development officer, Maddur and respondent No. 4 within 5 days from this day. Let a copy of this order be also furnished to the learned Government Advocate within the same time.

44. Sri V.C. Brahmarayappa, learned Government Advocate is permitted to file

his memo of appearance for respondents 1 and 3 within 15 days from this day.

After I dictated my order allowing the writ petition, learned counsel for the respondents submit that their clients propose to file writ appeals after obtaining certified copies of the order and move for stay before the appellate Bench and in the meanwhile, they pray for stay of the operation of my order for a reasonable time so that the arrangements made by this Court on 1-7-1982 will continue till that time.

2. Sri. M.N. Hegde, learned counsel for the petitioners opposes the prayer of the respondents for stay.

3. After hearing the parties, I made an interim order on 1-7-1982 on certain terms which is still in force. If my order is not immediately stayed before the appellate Bench examines the appeals that may be filed by the respondents and their prayer for stay, necessarily the interim arrangement made by this Court on 1-7-1982 will cease to exist. Against my order an appeal lies as of right. Before the appeals are filed with prayer for stay, which necessarily will take some time, it is not proper to disturb the position that exists to-day. In this view, it is proper for me to stay the operation of my order atleast for a period of 10 days. I, therefore, stay the operation of my order for a period of 10 days or till the Appellate Bench makes an order, whichever is earlier.