

(1987) 02 KAR CK 0017
In the Karnataka High Court
Case No : W.P. No. 4315/1986

Lingaraju B. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-02-1987

Acts Referred:

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

Citation : (1988) 1 KarLJ 421

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-In this petition under Art. 226 and 227 of the Constitution, the petitioners have sought for the following reliefs:

"i) Issue a writ of certiorari or any other appropriate writ or order or direction quashing the impugned notification Annexure-C issued by the second respondent dated 17-2-1986 in No. VCC. CHN. 100/85-86 in Karnataka Gazette Extraordinary 17th February 1983 K-13 so far as it relates to the petitioners.

ii) Writ in the nature of mandamus or order or direction directing respondent-2 to transfer Bannur village to Thyagadakatte Mandal from Tadaga Mandal.

iii) Strike down provisions of 4 of the Karnataka Zilla Parishad, Tarikere Panchayat Samithi Mandal Panchayat and Nyaya Panchayat as unconstitutional."

2. However, Sri Gunjal, learned counsel appearing for the petitioners, has submitted during the course of arguments that the relief as to the validity of Section 4 of the Karnataka Zilla Parishad, Taluk Panchayat Samithi, Mandal Panchayat, Nyaya Panchayat Act, 1983 (hereinafter referred to as the "Act") may be treated as given up. In view of this submission, it is not necessary to consider the validity of Section 4 of the Act.

3. The contention of Sri Gunjal, learned counsel for the petitioners is that the Divisional Commissioner, Mysore, has exercised the power under Section 4(3) of the Act arbitrarily and the manner of exercise is opposed to law. Whereas the

learned counsel appearing for respondents 5 to 8 submits that the exercise of power by the Divisional Commissioner does not suffer from any infirmity and it is not a matter in which interference is called for having regard to a Division Bench decision of this court in Bhadre Gowda v. State of Karnataka (I.L.R. 1986 Karnataka, page 2676).

4. In order to appreciate the aforesaid contentions, it is necessary to notice the relevant facts. The Deputy Commissioner, Chickmagalur by the notification dated 16-1-1986 bearing No. ELN.51/ 85-86 after considering the objections and suggestions, declared the area comprising group of villages as Thyagadakatte Mandal. The villages comprising the said Mandal are as follows:

- 1) Thyagadakatte
- 2) Bannur
- 3) Thyarajjanahalli
- 4) Cheeranahalli
- 5) Giryapura
- 6) Rangapura
- 7) Kallenahalli
- 8) Bhakthanakatte
- 9) Geejakatte
- 10) Basavapura
- 11) Beranahalli
- 12) Bandre.

5. Certain persons aggrieved by the aforesaid declaration of Thyagadakatte Mandal, made representations before the Divisional Commissioner, Mysore, under Section 4(3) of the Act. Respondents 4 to 8 are among them. In addition to respondents 4 to 8, other 5 persons also made representations. Those representations were registered as Case Nos. MP. RP. 5, 7 to 15/85-86. The Divisional Commissioner rejected those representations by the order dated 11-2-86. A copy of that order is produced as Annexure-B. He confirmed the declaration of Thyagadakatte Mandal as made by the Deputy Commissioner. Subsequently, he took up the representation dated 8-2-86 made by Sri B.R. Neelakantappa, M.L.A. Tarikere, Chickmagalur District and two others, and considered the same on 14-2-86 and revised the declaration made by the Deputy Commissioner under the Notification dated 16-1-1986 and formed a separate Mandal known as Thadaga Mandal consisting of Thadaga, Bankanakatte, Abbinaholalu, Anuvanahalli, Eanur, Veerapura (Bijure).

5.1. Pursuant to the above order bearing No. MP. RP. 111 140/85-86 dated

14-2-1986, the impugned notification Annexure-C is issued in which Thadaga Mandal is found at Sl. No. 107.

6. The question for consideration as already pointed out, is, whether under these circumstances, the Divisional Commissioner can be held to have exercised the power properly.

7. No doubt the order dated 14-2-1986 is not produced by the petitioners. However, the learned High Court Government Pleader has produced the records which contain the order dated 14-2-1986 passed by the Divisional Commissioner and the same is as follows: 8. There is no reason contained in this order. As far as the order dated 11-2-1986 is concerned which is produced as Annexure-B, by reason of the order dated 14-2-86, The Divisional Commissioner himself, has demonstrated that the order dated 11-2-1986 is not sustainable because the order dated 14-2-1986 modifies the order dated 11-2-1986, as it modifies the declaration made by the Deputy Commissioner.

9. Apart from this, the mode of exercise of power by the Divisional Commissioner under sub-section (3) of Section 4 of the Act is neither appropriate nor proper. The Deputy Commissioner declared the area comprising the group of villages as Thyagadakatte Mandal by the notification dated 16-1-1986. Sub-section (3) of Section 4 provides that the Commissioner may, within 30 days from the date of the notification either suo moto or on an application made by any person aggrieved by such notification and after giving reasonable opportunity of being heard to the parties concerned, revise the order of the Deputy Commissioner made under sub-section (1) or sub-section (2). Thus the aggrieved persons are entitled to make a representation or file an application before the Divisional Commissioner upto the period of 30 days from the date of the notification issued by the Deputy Commissioner. In the instant case, the Divisional Commissioner had gone on disposing of the representations as and when they were received. Some representations he disposed of on 11-2-1986 and rejected them and thereby confirmed the notification issued by the Deputy Commissioner. Other representations made by Sriyuths B.R. Neelakantappa, M.L.A. Tarikere, A. Channamallappa, Ex.V.P. Chairman, Anuvanahalli. Tarikere Taluk and B.T. Uma Mahesh were disposed of on 14-2-1986 revising the notification issued by the Deputy Commissioner. It is already pointed out that about 3 days earlier to 14-2-1986 i.e., on 11-2-1986, he had confirmed the notification of the Deputy Commissioner. This demonstrates that the Divisional Commissioner has exercised the power arbitrarily and capriciously.

10. Whenever a statute invests an authority either with the power of an appeal or revision to be invoked by the aggrieved party within a particular period and appeals or revisions as the case may be, are filed, the authority empowered to exercise the appellate or revisional power, is expected to wait till the last date prescribed under the statute for the purpose of filing an appeal or revision and then take up all the appeals or revisions as the case may be filed before it together for hearing as long as all those appeals or revisions relate to the same

subject. Otherwise, there is every likelihood of conflicting decisions. Further if such an authority disposes of the appeals or revisions in one way or the other before the expiry of the period prescribed, deciding of the appeals or revisions filed subsequently but well within the period of limitation will become only an empty formality because before filing of such appeals or revisions, the authority would have already taken a particular view. Exercise of power in such a manner is not only not in accordance with law but is opposed to the very basic notions of justice and fair-play and is opposed to the principles of natural justice. Therefore, in the instant case, the Divisional Commissioner has not exercised the power under sub section (3) of Section 4 of the Act in accordance with law. The exercise of power by the Divisional Commissioner in the instant case can very well be characterised as arbitrary and capricious. He ought to have waited till the expiry of 30 days from the date of the notification and decided all the applications or representations together by a common order, in accordance with law. Therefore, without expressing anything on the merits of the claim made by each of the parties, it is just and necessary to quash both the orders.

11. For the reasons stated above, this writ petition is allowed. The order dated 11-2-1986 bearing Case No. MP. RP. 5, 7 to 15/85-86 and also the order dated 14-2-1986 bearing Case No. MP. RP. III/85-86 passed by the Divisional Commissioner, Mysore Division, Mysore, are hereby quashed. Consequently, the notification bearing No. VCC. CHN. 100/85-86 dated 17-2-1986 issued by the Divisional Commissioner, Mysore Division, Mysore, in so far it relates to entries at Sl. Nos. 103 and the last entry after Entry No. 106 to which no number is given in the notification are quashed. The Notification in respect of other Man-dais is not disturbed.

12. The Divisional Commissioner, Mysore, is directed to hear the petitioners and the respondents and also all those whose names are found in the order dated 11-2-1986 (Annexure-B) and also Sri B.R. Neelakanthappa, M.L.A. Tarikere, A. Channamallappa, Ex. V.P. Chairman Anuvanahalli, Tarikere Taluk and B.T. Uma Mahesh and decide the same within two months from the date of receipt of this order.

13. The order be communicated to the Divisional Commissioner, Mysore, expeditiously.

Writ Petition is Allowed.