

(2006) 01 KAR CK 0056
In the Karnataka High Court
Case No : Writ Appeal No. 2897 of 2004

M. Munivenkatappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-01-2006

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 3, 4 (1) (a), 9

Citation : (2006) 2 KarLJ 40

Hon'ble Judges : R. Gururajan, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : Sundaraswamy Ramdas, Anand, Pradeep S. Sawkar, S. Sriranga, Santhosh S. Nagarale, for the Appellant; B. Veerappa, Government Advocate for Respondents 1 to 4, A. Nagarajappa, for Respondent 5, Vagdevi Associates, for Respondents 7, 10, 12 and 23 and B.C. Seetharamarao, for Respondents 14 to 20, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Appellant is before us challenging the order passed in the W.P. Nos. 51319 and 51320 of 2003, dated 24-5-2004 in this appeal.

2. Kothanur Village Panchayat comprises of Kothanur Village, Raghavanapalya, Jambusavari Dinne, Ashraya Colony, Harinagara and Vaddarapalya. The Kothanur Village comprises of Survey Nos. 1 to 80 measuring in all 1214 acres 37 guntas, Raghavanapalya Village comprises of Sy, Nos. 1 to 37 measuring about 127 acres 33 guntas. The other two villages namely Jambusavari Dinne and Ashraya Colony do not have any agricultural lands annexed to them. Respondent 6-Panchayat comes under the Bangalore District Zilla Panchayat, Elections to the 6th respondent-Panchayat were held in February 2000. The term of the elected body of the sixth respondent is entitled to continue till the term of 5 years is complete. By virtue of the order dated 18-11-2003 passed by the 4th respondent, the term provided to the elected body of the 6th respondent Panchayat is being illegally curtailed and taken away. It is the constitutional goal and scheme that

democracy should percolate to the grass root level and the administration should be carried on by democratically elected bodies.

3. The appellant is a resident of Vaddarapalya and belongs to scheduled caste by birth. Appellant was elected as member of Kothanur Village Panchayat in the general election held on 29-2-2000. He served the society as a member of Kothanur Village Panchayat till he was elected as Adhyaksha on 26-12-2002. On 7-9-2002, respondent 3 issued a notification about the reservation of seats to the post of Adhyaksha and Upadhyaksha in the respective Panchayat. In terms of Annexure-E, the post of Adhyaksha was reserved in the 6th respondent-Panchayat for the Scheduled Caste and Upadhyaksha for the General Category. Elections were held in the office of the 6th respondent on 26-12-2002 and the appellant was declared elected as Adhyaksha and took charge on the same day in the presence of the Special Tahsildar. Subsequent to the election, the Adhyaksha of the Kothanur Village Panchayat has evinced lot of interest and improved the village to the best of his ability, honesty, sincerity and hard working in terms of the Rules. He is entitled to continue in the office of Adhyaksha for a period of 27 months from the date of his election i.e., 26-12-2002. Appellant came to know that the third respondent has passed an order on 17-11-2003 and directed the fourth respondent to transfer all records of the 6th respondent-Panchayat to 5th respondent in terms of Annexures-F and G. Appellant initially challenged the action of the respondents 1 to 4 in interfering, with the affairs of the 6th respondent by issuing Annexures-F and G by taking away the records of Village Panchayat and handing over the same to the Bommanahalli Town Municipal Council, respondent 5. The Deputy Commissioner at the behest of the political bodies/had sent an order dated 17-11-2003 and immediate action was taken by the Chief Executive Officer, Bangalore Zilla Panchayat, respondent 4 on 18-11-2003. Thereafter appellant received a notification dated 28-10-2003. From a perusal of the notification dated 28-10-2003, it is seen that the second respondent has issued a notification on 11-6-2002 under the Karnataka Municipalities Act, 1964 calling for objections if any to transfer the area in regard to the Kothanur Village Panchayat i.e., to the Bommanahalli Town Municipal Council, respondent 5. The notification dated 28-10-2003 issued u/s 3 read with Section 4(1)(a) of the Karnataka Municipalities Act, 1964 shows that the inclusion of the Schedule A properties and boundaries more fully described in B Schedule. From a perusal of Schedule A it is clear that the Village Kothanur has been included in Schedule A but it does not say anything about Raghavanapalya though it is a part of Kothanur Village Panchayat. Further Raghavanapalya is included in the areas to be transferred to Bommanahalli Town Municipal Council in the Schedule B, Therefore the notification dated 28-10-2003 produced as Annexure-J is very clear and Raghavanapalya is excluded, while including Kothanur Village in Schedule B limits. Pursuant to the notification the Deputy Commissioner has directed the Chief Executive Officer to transfer the villages namely Konanakunte, Chunchanakatte, Kothanur, Sarakki, Agrahara Village to Bommanahalli Town Municipal Council. Pursuant to the notification the Deputy

Commissioner has directed the Chief Executive Officer to transfer the villages to Bommanahalli Town Municipal Council. Action thereafter was taken. According to the appellant the entire attempt by the State Government is to create confusion in regard to the continuance of the Kothanur Village Panchayat in the matter. Aggrieved by the orders and directions petitioners filed writ petitions in this Court. Respondents 6 to 13 came on record out of which respondent 12 was a defeated candidate in the election held on 26-12-2002 for the post of Vice-President. Respondent 7 lost the election. Respondents 7 to 12 instigated respondents 8 to 13 to implead themselves as respondents in the matter. Respondents 14 to 20 came on record. Respondents 20 to 24 again filed applications to come on record. After hearing the learned Single Judge dismissed the petition in terms of the impugned order. The said order is challenged in this appeal.

4. Notice was issued and respondents entered appearance. They opposed the appeal.

5. Heard the learned Counsels for the parties.

6. Learned Counsel for the appellant would argue that the entire attempt is to curtail the term of the office of the elected representatives in the Village Panchayat. He further argued that the procedure in terms of the Municipal laws has not been followed in the case on hand. He would also say that the proclamation is not in accordance with law in the case on hand. He would rely on various judgments. Per contra, respondents would argue that the term of the appellant has come to an end in February 2005. They would argue that in terms of the policy of the Government the areas in question have been transferred from Panchayat to Municipal Council. According to them, case-laws are clear enough to show that Courts are not to interfere in such matters.

7. After hearing, we have carefully perused the material on record.

8. Several writ petitions have been filed and a common order was passed by the learned Single Judge on 24-5-2004, Only two appeals are filed against the order passed in W.P. Nos. 51319 and 51320 of 2003. Hence it is necessary to give a finding only insofar as these two petitions are concerned. Learned Single Judge has noticed various contentions in the impugned order. One such contention was that the terms of the elected member is curtailed by virtue of the impugned notification. Learned Single Judge has ruled that the power exercised in such cases is not executive/administrative in terms of the findings. At this stage, it is seen that this Court has ordered status quo in terms of the order dated 28-10-2004. Now admittedly the term of the appellant has come to an end. Therefore, he cannot have any grievance with regard to curtailment in terms of the grounds raised before the learned Single Judge and ruled before us. This contention need not be considered in the light of the term having come to an end.

9. From a reading of the petition, it is seen that the entire petition is filed by way of private interest and not by way of public interest litigation. The very basis for

filing of the writ petition is with regard to curtailment of the term of the appellant. Now that the term has come to and end. Strictly speaking, the appeal may not survive on the facts of this case.

10. Learned Counsel further insisted and argued that the action of the respondent is not in accordance with law. The contention of the appellant is that the notification dated 11-6-2002 published by the Government is in violation of Section 9 of the Act. The objections have not been properly considered and there is no proclamation in terms of the laws governing these matters. According to petitioner Section 9 is not complied with in the case on hand. A procedure is prescribed under the Act. Section 4 provides for consultation of the respective Municipal Council in the matter. Section 9 provides that not less than thirty days before the publication of any notification declaring any local area to be (smaller urban area) or altering the limits of any such (smaller urban area) or declaring that any local area cease to be (smaller urban area) the (Governor) shall cause to be published in the Official Gazette, in English and Kannada, and to be posted up in conspicuous places in the said local area in Kannada, a proclamation announcing that it is proposed to constitute the local area to be (smaller urban area) or to alter the limits of the (smaller urban area) in a certain manner or to declare that the local area shall cease to be a (smaller urban area) as the case may be and requiring all persons who entertain any objection to the said proposal to submit the same, with the reasons therefor, in writing to the Commissioner within thirty days from the date of the said proclamation, and, whenever it is proposed to add or to exclude from a (smaller urban area) any inhabited area it shall be the duty of the Municipal Council also to cause a copy of such proclamation to be posted up in conspicuous places in such area. The Commissioner shall with all reasonable despatch, forward every objection so submitted to the Governor.

11. Appellants essential argument is that there is no proclamation in the matter. For the said purpose several case-laws have been relied on by the appellants.

12. Mahadevappa v. State of Mysore 20 LR 799, is a Bench decision of this Court. This Court has ruled that compliance is necessary in such matters.

13. State of Orissa Vs. Sridhar Kumar Mallik and Others, , the Court ruled that the new notification in terms of the Orissa Municipal Act, 1950 is not valid.

14. Seshagiri Aiyar Vs. Valambal Ammal and Others, , the Court noticed an application filed under Order 21, Rule 90 with regard to setting aside the sale.

15. A Division Bench of this Court in State Bank of Mysore Vs. R. Shammanna, , has ruled that when the rules governing specifically provides that a hearing shall be given, he ought to be given a fair hearing and failure to give such a hearing will vitiate the entire enquiry.

16. In West Bengal Electricity Regulatory Commission Vs. C.E.S.C. Ltd. etc. etc., , the Court noticed that statute itself provides that Court cannot deny such

right on the ground of practical inconvenience.

17. Amalpur Gram Panchayat Vs. State of Karnataka and Others, is a Division Bench decision of this Court with regard to notification issued u/s 9 of the Act. This Court ruled that the formation of municipality is a legislative power wherein concept of hearing does not arise.

18. The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, is a judgment of Supreme Court in the matter of constitution of Municipal Corporation in place of Municipal Council (Jalgaon).

19. Rai Vimal Krishna and Others Vs. State of Bihar and Others, is with regard to levy of tax by municipality.

20. From all these decision what is clear to this Court is that where the statute provides for a procedure in the matter that procedure ought to be followed for the purpose of consideration of matter in terms of the statute. There can be no quarrel over this proposition in terms of the statute and in terms of the case-laws. Admittedly, we are dealing in this appeal with regard to inclusion of certain villages from the Panchayat to Town Municipal Council.

21. Apex Court in Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, has ruled that the intention of the Government in establishing a Corporation under the Act is neither administrative nor executive. It is legislative process indeed.

22. The Supreme Court in State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., has ruled that it is for the Government to decide in what manner the Panchayat areas and the constituencies in each panchayat area will be delimited. It is for the Court to dictate the manner in which the same would be done.

23. This Court in Amalpur Gram Panchayat's case, considered the scope of Sections 3 and 9 of the Karnataka Municipalities Act. This Court in para 7 and para 9 has noticed the plea of hearing. After noticing this Court ruled that there is no requirement under the provisions of the Act to call for objections and to consider the same. In the matter of this nature, it is very difficult for the authorities to examine the various objections being raised after giving hearing to the parties concerned. If the entire villages have to be heard, it will become an endless process. These aspects were borne in mind by the Supreme Court while rendering the decisions in Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, and Sundarjas Kanyalal Bhathija's case. Therefore, we are of the view that hearing in each one of the cases is not required.

24. In the given circumstances and in the light of the case-laws, we are of the view that the learned Single Judge has rightly chosen to reject the case of the appellant. In fact the learned Single Judge has noticed that the notification was published and an affidavit of Tahsildar was filed in the matter. Though some arguments were made with regard to the affidavit of the Tahsildar, we are not

prepared to go into the minute details, particularly in the light of the decision rendered by the Division Bench of this Court in Amalpur Gram Panchayat's case.

25. We also see from the impugned order that the Government has chosen to consider the material in terms of the file made available to the Court. We have also gone through the file made available to us. We are of the view that there is consideration of the material as ruled by the learned Single Judge. We are not inclined to disturb those findings at the instance of the petitioner in a private interest litigation. We are also of the view that there is substantial compliance in the matter. The said, notification in terms of the law is legislative in character. That being so, various requirements as sought to be argued would not appeal to us. Learned Single Judge after noticing the legislative power has rightly in our view has chosen to reject the argument of the petitioner.

26. Insofar as mala fide, arguments are concerned, we find that there is absolutely no acceptable material on record placed before the Court to dislodge the finding of the learned Single Judge based on verification of the records. Though the appellant tried to invite our attention to the statement of objections and also to the affidavit filed by the Tahsildar, we are not impressed that the proceedings are initiated pursuant to any mala fide action.

27. Petitioner also raised a contention with regard to Raghavanapalya in the matter of merger with Municipal Council. Learned Single Judge has rightly left open that contention in terms of his finding in para 16. Learned Single Judge has provided a direction to the State Government to examine the contention of exclusion of small portion of Raghavanapalya, within a month from the date of receipt of a copy of the order. The interest of Raghavanapalya is fully protected by the learned Single Judge,

28. In conclusion, we are in agreement with the order passed by the learned Single Judge. No grounds. Appeal stands rejected.