

(1990) 08 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 4618 of 1989

Manohar Yadavannavar and Others

APPELLANT

Vs

Deputy Commissioner, Dharwad

RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 4(2)(C)

Citation : (1991) 4 KarLJ 519

Hon'ble Judges : N. Y. Hanumanthappa, J

Judgement

1. In view of coming into force of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983, (hereinafter referred to as "the Act"), the Government in its wisdom by issuing guidelines constituted various Revenue Districts in the State and also Mandal Panchayats. The object behind constituting Mandal Panchayats is to provide decentralisation of powers and functions to the local bodies like Mandal Panchayats for the purpose of promoting the development of democratic institutions and securing a greater measure of participation by the people in the said plans and in local and Governmental affairs and for purposes connected with and incidental thereto.

2. As per the guidelines prepared and the norms fixed, the concerned authorities issued notification regarding constituting Mandal Panchayats in the districts. Objections were invited. After the preliminary notification, the authorities after considering the objections, if any filed including the report submitted by the local authorities issued final notification determining the areas of Mandal Panchayats, their population, number of villages as its constituents including the headquarters of the Mandal Panchayats.

3. The powers to constitute Mandal Panchayats as per the Act are enumerated under Section 4 of the Act which deals about declaration of mandal and establishment of Mandal Panchayats. Section 4 reads as under:

"Declaration of mandal and establishment of Mandal Panchayats:

(1) Subject to the general or special orders of the Government, the Deputy Commissioner, if, in his opinion, it is expedient to declare any area comprising a village or group of villages having a population of not less than eight thousand and not more than twelve thousand to be a mandal, may, after previous publication, declare such area as a mandal for the purposes of this Act and also specify its headquarter:

Provided that the Government may by notification order that an area with a population of not less than four thousand may be so declared as a mandal in such areas of the districts of Belgaum, Chikkamagalur, Dakshina Kannada, Dharwar, Hassan, Kodagu, Shimoga and Uttar Kannada as may be notified by the Government:

Provided further that irrespective of population, wherever it is found necessary, the Government, as a special case, may, by notification, order that an area within a radius of eight kilometres (diameter of sixteen kilometres) from the centre of a village may be so declared as a mandal in such areas of the districts of Belgaum, Chikkamagalur, Dakshina Kannada, Dharwar, Hassan, Kodagu, Shimoga and Uttara Kannada as may be notified by the Government:

Provided also that the Deputy Commissioner may, with the permission of the Government declare any area comprising a village or group of villages having a population of either less than eight thousand or more than twelve thousand to be a mandal.

Explanation.-For the purpose of this section and Section 5, "population" means the population as ascertained at the last preceding census of which relevant figures have been published:

Provided that the reference in this explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as reference to the 1971 census.

(2) Subject to the general or special orders of the Government and the provisions of this Act, the Deputy Commissioner may, at the request of the mandal concerned, or otherwise, and after previous publication of the proposal by notification, at any time,- (a) increase the area of any mandal by including within such mandal any village or group of villages;

(b) diminish the area of any mandal by excluding from such mandal any village or group of villages;

(c) alter the name of any mandal; or (d) declare that any area shall cease to be a mandal.

(3) The Commissioner may either on an application made within thirty days from the date of the notification by any person aggrieved by such notification, or suo motu and after giving a reasonable opportunity of being heard to the applicant or

the mandals concerned revise the orders of the Deputy Commissioner under sub-section (1) or sub-section (2) and may also if he considers necessary, modify it as provided in the third proviso to sub-section (1). Every order so passed revising or modifying the order of the Deputy Commissioner shall be published in the Official Gazette.

(4) In every Mandal declared as such under this section there shall be established a Mandal Panchayat."

4. Under Section 4(2) of the Act, the Deputy Commissioner gets power to increase or decrease the area of the Mandal Panchayat; alter the name of any Mandal or to declare any area shall cease to be a Mandal; whereas the Divisional Commissioner under Section 4(3) of the Act gets power to revise the orders of the Deputy Commissioner passed under sub-section (1) or (2) of Section 4. It is needless to say that the final notification regarding constituting a Mandal Panchayat came to be issued after publishing the notification in the Official Gazette, preceded by the orders passed by the Divisional Commissioner if a request was made to earlier or suo motu revise the orders passed by the Deputy Commissioner.

5. Nowhere in the Act it is said either the Deputy Commissioner or the Divisional Commissioner has got jurisdiction to pass an order to transfer the headquarters of a Mandal Panchayat from one place to another although under sub-section (2) of Section 4 of the Act, the Deputy Commissioner has got powers to increase or decrease the area or to diminish the Mandal Panchayat including to alter the name of the Mandal Panchayat. Regarding powers of the Divisional Commissioner under sub-section (3) of Section 4 of the Act, this court has held that the word "revise" appears in sub-section (3) of Section 4 of the Act cannot be equated to the word "revise" as appeared under Section 115, CPC. The scope of Section 4(3) of the Act has been clearly laid down by this court in the case of *Basavarajappa & Others v The Divisional Commissioner, Mysore & Others*, reported in 1987(1) BLJ 23. (W.P. No. 4289/1986 disposed of on 1-10-1986).

6. In this writ petition, the petitioners have sought for the following reliefs:

"(a) Issue a writ of mandamus or direction or an order in the nature of a writ directing the respondent to implement the proposal made in the resolution at Annexure-C, dated 1-2-1989 in accordance with sub-section (2) of Section 4 of the Act;

(b) Grant such other relief as this Hon'ble Court deems fit and proper under the circumstances of the case including costs." Their case is that they are the members of Aralikatti Mandal Panchayat of Hubli Taluk. Earlier the Deputy Commissioner had issued a notice fixing Aralikatti as Mandal headquarters. The same came to be challenged by villagers requesting the Divisional Commissioner to change the headquarter of the Mandal from Aralikatti to Chabbi. That was before constituting the Mandal Panchayat. The Divisional Commissioner in his Order No. CDP.MP.WDCR.ZA 3/1985-86, dated 14-2-1986 rejected the said

request on the ground that Aralikatti is a suitable place to have headquarters as it is situated at centre of the villages.

7. After the Mandal Panchayat came into existence the members of the Mandal Panchayat, who are majority in number, resolved in its meeting dated 1-2-1989 to shift the headquarters of Mandal from Aralikatti to Chabbi as at Annexure-C. After passing such a resolution they gave a representation to the Deputy Commissioner requesting that necessary action be taken on the basis of the resolution at Annexure-C, namely, to alter the name of the Mandal Panchayat from Aralikatti to Chabbi. According to Shri Channabasappa, learned counsel for the petitioner, Section 4(2)(c) of the Act gives powers to the Deputy Commissioner to change the headquarters of a Mandal Panchayat to another place. According to him, the Deputy Commissioner being the competitive authority, having powers to take action, in spite of representation given enclosing a copy of the resolution, has failed to implement the resolution at Annexure-C. Thus, he contends that the action of the Deputy Commissioner is a clear case of inaction on his part though powers conferred on him. As such a writ of mandamus has to be issued to the Deputy Commissioner to take action as per Annexure-C.

8. As against the said contention, Smt. Nimmi Swamy, learned Government Pleader who took notice for the respondent, argued that nowhere in Section 4 of the Act either the Deputy Commissioner or the Divisional Commissioner has got powers to shift the headquarters of a Mandal Panchayat when once it is fixed following the formalities. According to her, when once a notification is issued by the authorities concerned by exercising their administrative functions fixing a particular place as headquarters of a Mandal Panchayat, subsequently the members of the Mandal Panchayat or even the villagers cannot compel the authority to shift the same, merely because some hardship has been faced either by the members of the Mandal Panchayat or the villagers. According to her, the word "alter" occurs under Section 4(2)(c) of the Act is altogether different and from this it is improper to infer that it refers to shifting of headquarters of a Mandal Panchayat. According to her, the Dictionary (New Webster's Dictionary) meaning of the word "alter" means: to change, to make over or different; to make some change in, to modify, to vary in some degree. The Government cannot have objection to change the nomenclature of a Mandal Panchayat. Since determining the headquarters is purely a Government function, namely, an executive order, neither the villagers nor the members of the Mandal Panchayat will have any statutory rights to seek for change or shift the Mandal Panchayat from one place to another. She contends that similar requests were made by some of the villagers before the Mandal came to be constituted by filing an application before the Divisional Commissioner which came to be rejected by him as per Annexure-D on the ground that the view taken by the Deputy Commissioner in making Mandal headquarters at Aralikatti instead of Chabbi as reasonable one. In support of her contention that the executive orders cannot be equated to the orders passed under the statute relies upon the decision reported

in AIR 1988 SC 1681, J.R. Raghupathy v State of A.P. & Others. In the said case ultimately the Supreme Court had to deal with and decide whether the High Court of Andhra Pradesh while deciding the view taken by the authorities concerned to shift the Mandal Panchayat from one place to another by exercising the powers conferred under the Andhra Pradesh Districts (Formation) Act, 1974, as amended by the Andhra Pradesh Districts (Formation) Amendment Act, 1985, and the rules framed thereunder was right or otherwise. The Supreme Court while dealing about the effect of the guidelines or the executive orders held that the same cannot be equated to orders passed under the statute. According to her no direction shall be issued to the Deputy Commissioner to exercise his powers under Section 4(2)(c) of the Act to give effect to the resolution at Annexure-C. Such a direction which was given by the High Court of Andhra Pradesh came to be criticised by the Supreme Court in the decision cited above. At para 18 of the Judgment, the Supreme Court has taken a view regarding scope, guidelines etc.; including the powers of the authorities to interfere. Para 18 of the Judgment reads as follows:

"Broadly speaking, the contention on behalf of the State Government is that relief under Article 226 of the Constitution is not available to enforce administrative rules, regulations or instructions which have no statutory force, in the absence of exceptional circumstances. It is well-settled that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force, which do not give rise to any legal right in favour of the petitioner. The law on the subject is succinctly slated in Durga Das Basu's Administrative Law, 2nd Edn. at p. 114:

"Administrative instructions, rules or manuals, which have no statutory force, are not enforceable in a court of law. Though for breach of such instructions, the public servant may be held liable by the State and disciplinary action may be taken against him, a member of the public who is aggrieved by the breach of such instructions cannot seek any remedy in the courts. The reason is, that not having the force of law, they cannot confer any legal right upon anybody, and cannot, therefore, be enforced even by writs under Article 226."

The learned author however rightly points out at p. 145:

"Even though a non-statutory rule, bye-law or instructions may be changed by the authority who made it, without any formality and it cannot ordinarily be enforced through a court of law, the party aggrieved by its non-enforcement may, nevertheless, get relief under Article 226 of the Constitution where the non-observance of the non-statutory rule or practice would result in arbitrariness or absence of fairplay or discrimination,-particularly where the authority making such non statutory rule or the like comes within the definition of "State" under Article 12."

In G.J. Fernandez's case AIR 1967 SC 1753, the petitioner submitting the lowest tender assailed the action of the Chief Engineer in addressing a communication

to all the tenderers stating that even the lowest tender was unduly high and enquired whether they were prepared to reduce their tenders. One of them having reduced the amount of his tender lower than the lowest, the Chief Engineer made a report to the Technical Sub-Committee which made its recommendations to the Major Irrigation Projects Control Board, the final authority which accepted the tender so offered. The High Court dismissed the writ petition holding that there was no breach of the conditions of tender contained in the Public Works Department Code and further that there was no discrimination which attracted the application of Article 14. The question that fell for consideration before this court was whether the Code consisted of statutory rules or not. The so-called rules contained in the Code were not framed under any statutory enactment or the Constitution. Wanchoo, C.J. speaking for the court held that under Article 162 the executive power of the State enables the Government to issue administrative instructions to its servants how to act in certain circumstances, but that would not make such instructions statutory rules the breach of which is justiciable. It was further held that non-observance of such administrative instructions did not give any right to a person like the appellant to come to court for any relief on the alleged breach of the instructions. That precisely is the position here. The guidelines are merely in the nature of instructions issued by the State Government to the Collectors regulating the manner in which they should formulate their proposals for formation of a Revenue Mandal or for location of its headquarters keeping in view the broad guidelines laid down in Appendix I to the White Paper. It must be stated that the guidelines had no statutory force and they had also not been published in the Official Gazette. The guidelines were mere departmental instructions meant for the Collectors. The ultimate decision as to formation of a Revenue Mandal or location of its headquarters was with the Government. It was for that reason that the Government issued the preliminary notification under sub-section (5) of Section 3 of the Act inviting objections and suggestions. The objections and suggestions were duly processed in the Secretariat and submitted to the Cabinet Sub-Committee along with its comments. The note of the Collector appended to the proposal gave reasons for deviating from the guidelines in some of the aspects. Such deviation was usually for reasons of administrative convenience keeping in view the purpose and object of the Act i.e., to bring the administrative nearer to the people. The Cabinet Sub-Committee after consideration of the objections and suggestions received from the Gram Panchayats and members of the public and other organisations as well as the comments of the Secretariat and the note of the Collector came to a decision applying the standards of reasonableness, relevance and purpose while keeping in view the object and purpose of the legislation, published a final notification under sub-section (5) of Section 3 of the Act. There is nothing on record to show that the decision of the State Government in any of these cases was arbitrary or capricious or was one not reached in good faith or actuated with improper considerations or influenced by extraneous considerations. In a matter like this, conferment of discretion upon the Government in the matter of formation of a Revenue Mandal or location

of its headquarters in the nature of things necessarily leaves the Government with a choice in the use of the discretion conferred upon it." (emphasis supplied)

9. In my view the above decision apply in all fours to the case on hand. It is proper to state here that nowhere it is shown that the discretionary powers earlier used by the Deputy Commissioner and the Divisional Commissioner were not used properly or used improperly or under mistaken notion. It means that it is not established that while determining Aralikatti as Mandal headquarters the decisions taken either by the Deputy Commissioner or by the Divisional Commissioner were in any way suffer from procedural impropriety, illegality or irrationality.

10. Regarding scope of Section 4(3) of the Act, as observed earlier, this court has held in the case of Basavarajappa & Others v The Divisional Commissioner, Mysore & Others, reported in 1987(1) BLJ page 23 (W.P. No. 4289/1986 decided on 1-10-1986), as follows:

"From the language it is clear that the Divisional Commissioner may suo motu or on an application revise the order of the Deputy Commissioner. That power is not described as revisional power. It suffices to state that the nature of the power exercised by the Divisional Commissioner is quasi-judicial inasmuch as he is required to give a hearing to the applicant and the Mandal before an order is passed. That it should be equated with the power of revision of the Civil Courts or some other authority is difficult to accede to particularly in the light of the stand taken by the learned Government Pleader on behalf of the State that the word "revise" should be given the ordinary dictionary meaning to mean rectify, alter, rescind or otherwise change and therefore not rejected to questions of errors of jurisdiction only.

There is some force in the stand taken by the learned Government Pleader. Section 4 of the Act is more than a self-contained section providing for the constitution of a Mandal and its headquarters where no particular person's right is affected and therefore no judicial remedy was contemplated by the legislature in enacting Section 4 of the Act. Perhaps, the best that could be said is that sub-section (2) of Section 4 of the Act which provides for changing the headquarters of the Mandal or the area of the Mandal or the name of the Mandal or declare that any area shall cease to be a Mandal and in such cases the Mandal or any person belonging to the Mandal may be said to be an aggrieved person and not otherwise. If that is borne in mind then it is difficult to hold that Section 4 of the Act should be held to be a provision corresponding to Section 115 of the CPC. To my mind it appears more to be a corrective jurisdiction on the administrative side rather than any judicial act, as the Deputy Commissioner under sub-section (1) of Section 4 of the Act does not function as a judicial or quasi-judicial authority. Therefore, this contention also is liable to be rejected."

11. Almost a similar view has been taken by this court in W.P. No. 1606/1990 decided on 1-2-1990, Narasegowda and Others v State of Karnataka & Others.

While dealing with the powers of the Government in the matter pertaining to the decision taken by the Government in respect of conversion of Town Municipal Council into Mandal Panchayat has held thus:

"The question whether a particular Municipal Council of an area should be treated as a Municipal Council or should be treated as a Panchayat is a matter to be left to the State Government. In such matters, it is not appropriate for this court to interfere. Therefore, I do not think, so far as the first relief is concerned, this court can grant any relief to the petitioners."

12. In view of the principles laid down by the Supreme Court and also this court in matters of this nature, I do not think either the members of the Mandal Panchayat or the villagers will have a right to urge for shifting of the headquarters of a Mandal Panchayat from one place to another. If such a power is available to the authorities concerned under Section 4(2)(c) of the Act, then it will be very difficult to carry on the administration because today a group constituting majority of a Mandal Panchayat may pass a resolution to shift the headquarters of the Mandal from one place to another and tomorrow their rivals, who will be more in number, may pass a similar resolution urging the authorities to shift the headquarters from that place to another place. In order to avoid such contingencies, the legislature in its wisdom thought it fit to use the word only "alter the name of the Mandal Panchayat" but nowhere said to shift the headquarters of the Mandal Panchayat. When such a power is not available under the Act, I do not think any request by the members of the Mandal Panchayat or the villagers may persuade the authorities to shift the headquarters of the Mandal Panchayat.

13. Sri Channabasappa, learned counsel for the petitioners submitted that this court has taken a view in W.P. No. 4489/1986 decided on 20-10-1987, Madivalappa & Another v The State of Karnataka & Others in the matter of altering the name of the Mandal Panchayat. It is proper to mention here that that was the decision where it had dealt with in the absence of the law laid down by the Supreme Court in J.R. Raghupathy's case, referred to supra. In that case a request was made to alter the name of the Mandal Panchayat. The court gave a direction to the Deputy Commissioner to initiate action under Section 4(2) of the Act and to complete the proceedings regarding altering the name of the Mandal Panchayat within a period of eight weeks. In the said case, there was no reference to the order passed by the Supreme Court cited supra. In the said Writ Petition W.P. No. 4489/1986 which was disposed of on 20-10-1987 nowhere it is mentioned in the order the request was to shift the headquarters. Hence, in my view, the said decision has no application to the case on hand.

14. Since in this writ petition the petitioners have sought for a writ of mandamus directing the Deputy Commissioner to consider the resolution at Annexure-C and to act according to it, even now if such a request is still pending before the Deputy Commissioner, it is for him to dispose of such a request or application in view of the law laid down by the Supreme Court, this court (referred to above)

including my observations, within one month from the date of receipt of this order.

15. With these observations, the writ petition is disposed of. There is no order as to costs.

16. Smt. Nimmy Swamy, learned Government Pleader is permitted to file her memo of appearance within four weeks.