
(1983) 04 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 785 of 1982

Motilal	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 27-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) RLW 437 : (1983) WLN 130

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.M. Kasliwal, J.—The petitioner, a resident of village Kishangarh Renwal, Tehsil Sambhar, District Jaipur, has filed this writ petition challenging the notification dated October 4, 1971 and September 15, 1978, by which the State Government has declared Kishangarh Renwal Panchayat Circle as a Municipality. According to the petitioner Gram-Panchayat Kishangarh Renwal was constituted in the year, 1956. The Gram Panchayat comprised of three revenue villages, viz., (1) Kishangarh Renwal (2) Moondli Ranjitpura and (3) Dhondhia Ram Singhpura. The revenue village Kishangarh Renwal comprised of the following dhanis. Their approximate from village Kishangarh Renwal is also given against each as follows:

(1) Hathipura 4 miles (2) Ramgodiyaon-ki-dhani 7 1/2 miles (3) Sodhiwali dhani 7 1/2 miles

2. Revenue village Dhudhia Ramsinghpura comprised of the following dhanis and their approximate distances are given as under:

(4) Ahiron-ki-dhani 7 1/2 miles (5) Baiji-wali dhani 7 1/2 miles (6) Ramsinghpura 2 miles

3. Revenue village Moondi Ranjipura comprised of the following dhanis and their approximate distances are given as under:

(1) Ranjitpura (3) miles (2) Motiwali dhani (2) miles (3) Sampatwali dhani 1 1/2 miles. (4) Andhiyawali dhani (3) miles. (5) Gurnehali dhani (3) miles

4. The State Government issued a notification No. F. 1(6)L & G/172/58736, dated October 4, 1974, in exercise of its power u/s 6(1) of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as the "Act"), declaring that the State Government sought to convert the Gram-Panchayat Kishangarh Renwal into a Municipality. It was also mentioned that the objections to this proposed conversion, if any, should be filed with the authority concerned within a period of two months from the date of its publication in the official Gazette or announcement by affixing notice at conspicuous places or by beat of drums, whichever is later. According to the petitioner the State Government, while seeking to convert the Gram-Panchayat Kishangarh Renwal into a Municipality, did not issue any notice nor published any notification in this regard so as to validly exclude the area from Gram-Panchayat and vest the same in the proposed Municipality. A copy of the notification was pasted only in village Kishangarh Renwal & not in any other village or their suburbs covered by the Gram-panchayat. The beating of drum was not done at any other place except in village Kishangarh Renwal. The grievance of the petitioner is that most of the people in the area did not know of the fact of the proposed conversion and were precluded from preferring their objections. It is admitted by the petitioner that some of the residents of village Kishangarh Renwal filed their objections in or about the month of September, 1975, with the authorities concerned.

5. The other objection raised by the petitioner is that the villages in the Gram-Panchayat and their suburbs were situated at the distance of approximately 2 to 4 miles from village Kishangarh Renwal as well as the villages and suburbs inter se and hence they could not be included into a Municipality or converted into a Municipal Board in view of proviso (1) to Sub-section (2) of Section 5 of the Act. The above provision clearly prohibited the inclusion of any town or suburbs in a Municipality with any other town or suburbs from which it is separated by more than one mile of land unoccupied by houses.

6. Another objection raised by the petitioner is that the population of village Kishangarh Renwal was about six thousand only and since the other areas could not be included in Kishangarh Renwal, the impugned notification was in violation of proviso (ii) to Sub-section (1) of Section 5 of the Act, which requires that the population of the area proposed to be included in a Municipality should not be less than eight thousand.

7. The case of the petitioner further is that the proposal of conversion of the Gram-Panchayat into a Municipality was abandoned because nothing was heard or done in this regard for a considerable long period of time. Thereafter at the request of some inhabitants of the Gram Panchayat area another opportunity of filing the objections was given and some of the residents village Kishangarh Renwal again filed their objections on January 5, 1978. In the objections dated January 5, 1978, it was stated inter alia, that the village and their suburbs

existed at a distance of 5-6 miles from each other and, that looking to the population of the area it could not be included or converted into a Municipality and, that the Gram-Panchayat in reply refuted it not to be converted into a Municipality and, that the cause of the development of the area could not be served in a better manner by converting it into a Municipal Board, According to the petitioner even after filing the aforesaid objections no opportunity of hearing was given and the Government published a notification No F. 1(6) L & G/74/3888-96, dated September 15, 1978 u/s 4(1) of the Act which was published in the Rajasthan Gazette, dated September 28, 1978 It was mentioned in this notification, to the surprise of the residents of Gram-Panchayat Kishangarh Renwal, that the objections filed were found without substance, baseless and unsustainable and that the Gram-Panchayat Kishangarh Renwal was being converted into a Municipality.

8. Apart from the above-mentioned objections it has also been alleged by the petitioner that in issuing the aforesaid notification the mandatory requirement of Section 86 of the Rajasthan Panchayat Act, 1953 (here in after referred to as "the Panchayat Act"), were ignored altogether. It is further alleged that unless an area is excluded from a Panchayat circle after following the provisions laid down u/s 86 of the Panchayat Act and the Rules framed there under, it cannot be properly included within the limits of a Municipality. By an application, dated June 28, 1982 the petitioner has sought permission to add one more ground in the writ petition that the proviso added to Section 4 of the Act by making an amendment in the year 1974, was illegal and ultra vires the provisions of Section 4 of the Act itself. The proviso cannot travel beyond the ambit of the main Section and it is also illegal as it gave unbridled unguided and arbitrary powers to the State Government to exclude any area from the Panchayat without following the principles of natural justice. The petitioner has thus also prayed that proviso to Section 4 of the Rajasthan Municipalities Act amended by Section 2 of the Rajasthan Municipalities (Second Amendment) Act, 1974, may kindly be declared ultra vires to Section 14 of the Act.

9. The State Government in reply have stated that revenue village Kishangarh Renwal consisted of 60 dhanis and Mohallas and the distance between each of the occupied houses was less then one mile. Similarly revenue village Dhondbia Ramsinghpura comprised of 9 dhanis and Mohallas and the distance in their case is also less than one mile. In case of revenue village Moodli Ranjeetpura it is stated that it comprises of 12 dhanis and Mohallas and the distance in between them is also less than one mile. The case of the State Government further is that the entire inhabited population of Kishangarh Renwal Panchayat Circle was situated in a distance of less than one mile. It is farther alleged that under the amended provisions of Section 4 of the Act whole or any part of a Panchayat circle can be declared as a Municipality and in that case it was not necessary to observe and follow the procedure laid down in the Panchayat Act. It is further alleged that the notification, dated October 4, 1974 was duly published in the Rajasthan Gazette and was also notified by pasting the same on November 3,

1974 near the Chaupar of Kishangarh Renwal. Village Kishangarh Renwal was the important central place of the entire Panchayat circle and the office of the Gram Panchayat is also situated there and as such the pasting of notice was also done in that area and proclamation was also done by beating of drums in the said area. Document Ex. R. 1 has been filed in support of the above contention. It is further alleged that only five objections of the persons mentioned in para 13 of the reply were received which consisted of Balveer Singh, Sarpanch Gram Panchayat Gulabchand Doshi, President Vyapar Mandal, Kishangarh Renwal, entire, village community and people of Panchayat circle through Laxmi Narain Kisan and others, Shri Gulab Chand Doshi, President, Block village Panchayat Congress Committee and Shri Laxmi Narain, President Block Congress Committee. It is further alleged that the distance between the Dhansis situated in the panchayat area was not more than one mile and in support of this a map Ex. R. 2 has been filed. The State Government has further alleged that the population of panchayat area of Kishangarh Reawal, according to the Census report of 1971, was eleven thousand, five hundred eighty and now the population has increased much beyond this. According to this census report of 1971, the population of village Kishangarh Renwal itself was ten thousand, one hundred forty one. It is further alleged that the notification, dated September 15, 1978, was quite legal and the same has been issued after considering the objections raised in this regard. It is further alleged that apart from the notice pasted on November 3, 1974 at the public place of Chopar and also by beat of drums, again the objections were invited by pasting a notice on December 5, 1977, and also issuing proclamation by beat of drums. In this manner full and sufficient opportunity has been given to all and sundries and the notification has been issued after considering the objections received in this regard. It has also been alleged that the population of Panchayat Kishangarh Renwal was more than eight thousand and it was an important place in view of the transport and trade facilities. There was proper facility of water, electricity, education, medical, post-office, railway station etc. and keeping in view the over all development of the area and in larger public interest, the State Government had considered it just and proper to convert the Gram Panchayat into a Municipality.

10. I have given my careful consideration to the allegations made in the writ petition and the reply filed by the State and the arguments advanced by learned Counsel for both the parties.

11. There is only a bold assertion by the petitioner that the approximate distances comprising the dhanis and suburbs in the three revenue villages is more than one mile. This is refuted by the Government in its reply and document Ex. R. 2 has also been filed to show that the distances were not more than one mile. There is no reason to disbelieve the stand taken by the State Government. In any case it becomes a disputed question of fact which cannot be gone into in the exercise of jurisdiction of this Court under Article 226 of the Constitution.

12. As regards the contention of the petitioner that the population was less than

eight thousand, no document has been filed by the petitioner in support of this contention. The State Government in its reply has clearly stated that according to the census report of 1971, the population of the entire Panchayat circle was eleven thousand five hundred eighty and that of village Kishangarh Renwai alone was ten thousand one hundred forty one. This figure has been given according to census report of 1971 and according to the normal population growth, there is no reason to presume that in 1974 & 1978 when the impugned notifications were issued, the population of the area in question would decrease and become less than eight thousand. I, therefore, hold that the population in the area concerned was more than eight thousand and as such there was no violation of proviso (ii) of Sub-section (1) of Section 3 of the Act.

13. As regards the publication of the notice in question, Section 6 of the Act lays down that the same shall be published in the official Gazette and pasted on conspicuous spots or proclaimed by beat of drums in the area concerned. Admittedly the notification u/s 4 of the Act was published in the Gazette as back as October 4, 1974 and was pasted at Chopar Kishangarh Renwal and was also proclaimed by beat of drum and objections were also filed by persons mentioned in para 13 of the reply to the writ petition. The persons who filed the objections were Sarpanch, Gram-Panchayat, President Vjapar Mandal, entire village community and people of Panchayat area through Laxmi Narain Kisan and others, President Block village Panchayat Congress Committee and President, Block Congress Committee. These objections were filed on October 5, 1975 and October 8, 1975 and it cannot be said that the people in the area had no knowledge about the proposed action of converting Gram Panchayat into Municipality. Admittedly objections were again invited on December 25, 1977 by pasting notice at conspicuous place and also by beat of drums. Objections were again filed on January 5, 1978 and it is now too late for the petitioner to raise an objection that people in the area had no knowledge about the proposed action. Thus, I find no force in the objection of the petitioner that any principles of natural justice have been violated or opportunity of hearing or filing objections has not been given to the residents of the area concerned.

14. The State Government in its reply has clearly stated that village Kishangarh Renwal is an important town taking in view the transport and trade facilities. There is facility of water, electricity, medical etc. in the area. There are educational institutions, post-office and Railway station and the action has been taken in overall development of the area & in the interest of public at large. It is the subjective satisfaction of the State Government to convert a Panchayat area into a Municipality & there is no allegation of the petitioner that such action has been taken by the State mala fide or with any extraneous considerations.

15. It was contended by Mr. Maloo, learned Counsel for the petitioner, that proviso to Section 4 which was inserted by Section 2 of the Rajasthan Municipalities (Second Amendment) Act, 1974, is ultra vires of Section 4 of the Act. It would be proper to reproduce Section 4 and the proviso in question:

Section 4 Delimitation of Municipalities : (1) Subject to the provisions of Sections 5 and 6, the State Government may, from time to time, by notification in the official Gazette

- (a) declare any local area to be a Municipality
- (b) define the limits of any Municipality;
- (c) include or exclude any area in or from any Municipality
- (d) otherwise alter the limits of any Municipality
- (e) declare that any local area shall, from a date to be specified in the notification, cease to be a Municipality.

Provided that for including in any Municipality the whole or a part of a Panchayat circle or for declaring the whole or part of a Panchayat circle as a Municipality, it shall not be necessary to observe and follow the procedure laid down in the Rajasthan Panchayat Act, 1953 (Rajasthan Act XXI of 1953) for excluding the whole or part of any Panchayat circle from any Panchayat or for declaring that any such Panchayat circle has ceased to be a Panchayat, not with standing anything contained in any judgment or order of any Court.

The argument of Mr. Maloo in this, regard is that Section 86 of the Panchayat Act lays down that the State Government may, at any time, after one month's notice published in the prescribed manner either on its own motion or at the request of the Panchayat or of the residents of any Panchayat circle, village or other area and by a notification in the official Gazette

- (a) include any area in a Panchayat circle
- (b) exclude any area from a Panchayat circle, or
- (c) transfer any area from one Panchayat circle to another

It is contended by Mr. Maloo that by adding a proviso in Section 4 of the Rajasthan Municipalities Act, any procedure as prescribed u/s 86 of the Panchayat Act cannot be dispensed with. It is also argued that the function of a proviso is to limit the main part of the Section and carve out something which too for the proviso would have been within the operative part of the main Section. It is contended that a proviso cannot be enacted to lay down any provision independent of the main Section. It is thus contended that in the present case the proviso to Section 4 introduced by Rajasthan Municipalities (Second Amendment) Act, 1974, cannot lay down the provision in an independent manner that it would not be necessary to observe and follow the procedure laid down in the Rajasthan Panchayat Act, 1953 for excluding the whole or part of any Panchayat circle from any Panchayat and to include it in any Municipality. Mr. Maloo placed reliance on the following observations by Lord Simonds in 1951 (ALR) 839). In the above report Lord Simonds quoted the following passage from (1950) 2 All E.R. 1236:

We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.

Lord Simonds then criticised the above passage in the following manner:

The first part of this passage appears to be an echo of what was said in Heydon's case (1) three hundred years ago and so regarded, is not objectionable. But the way in which the learned Lord Justice summarises the broad rules laid down by Sir Edward Coke in that case may well induce grave misconception of the function of the court. The part which is played in the judicial interpretation of a statute by reference to the circumstances of its passing is too well known to need re-statement. It is sufficient to say that the general proposition that it is the duty of the court to find out the intention of Parliament not only of Parliament but of Ministers also-cannot by any means be supported. The duty of the court is to interpret the words that the legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited, see, for instance, *Assam Railways & Trading Co. Ltd. v. Inland Revenue Comrs* (2), and particularly, the observations of Lord Wright 1935 A.C. 858.

The second part of the passage that I have cited from the judgment of the learned Lord Justice is, no doubt, the logical sequel of the first. The court, having discovered the intention of Parliament and of Ministers too, must proceed to fill in the gaps. What the legislature has not written, the court must write. This proposition which re-states in a new form the view expressed by the Lord Justice in the earlier case of *Seaford Court Estate Ltd. v. Asher* (3) (to which the Lord Justice himself refers), cannot be supported. It appears to me to be a naked usurpation" of the legislative function under the thin disguise of interpretation, and it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed; the remedy lies in an amending Act For the reasons to be given by my noble and learned friend of Opinion that this appeal should be dismissed with costs.

It is also argued by Mr. Maloo that the Panchayat Act and the Municipalities Act do not operate on the same subject and no provision made in the Municipalities Act can repeal the provisions contained in the Panchayat Act. His argument is that by adding proviso in Section 4 of the Municipalities Act, the provisions contained in Sec. 86 of the Panchayat Act still remain intact and it was mandatory on the part of the State Government to follow the mandatory provisions of Section 86 of the Panchayat Act while excluding the entire area of Gram Panchayat Kishangarh Renwal and constituting it into a Municipality. Reliance is placed on the *Attorney General v. Moore* 1978 (3) Ex. D. 276. It was held in the above case that it cannot be said that the Act for regulating Railways repeals the Municipal Corporations Act.

16. On the other hand, it was argued by Mr. Khan, learned Government Advocate that the legislature was quite competent to enact the proviso to Section 4 of the Act and to dispense with the procedure laid down in the Rajasthan Panchayat Act for excluding the whole or part of any Panchayat circle from any Panchayat. It is also submitted that an independent provision can also be laid down in a proviso which may have no relation with the main part of the Section. Reliance in support of the above argument is placed on *The State of Rajasthan Vs. Leela Jain*, and *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*,

17. In my view there is no force in the contention raised by learned Counsel for the petitioner. Section 86 of the Panchayat Act deals with areas to be included, excluded or transferred from a Panchayat circle. It has nothing to do with the constitution of a Municipality. The constitution and delimitation of Municipalities is covered by the provisions contained in Chapter II of the Rajasthan Municipalities Act. The main provisions contained in Section 4 deal with delimitation of Municipalities and for the purpose the State Government can issue a notification from time to time, subject to the provisions of Sections 5 and 6 of the Act. By inserting a proviso by Section 2 of the Rajasthan Municipalities (Second Amendment) Act, 1974, a provision was made where whole or part of a Panchayat circle was to be declared as a Municipality. I see no valid reason to hold that the legislature was incompetent to lay down a provision in the Municipalities Act that in case the whole or part of a Panchayat circle is declared as a Municipality, it shall not be necessary to observe and follow the procedure laid down in the Panchayat Act. There is no ambiguity in finding out the intention of the legislature in laying down under this proviso that for including in any Municipality, the whole or part of a Panchayat circle or for declaring the whole or part of a Panchayat circle as a Municipality, it shall not be necessary to observe and follow the procedure laid down in the Rajasthan Panchayat Act. It appears that in the absence of such provision, it would have been incumbent to follow the procedure as contained in Section 86 of the Panchayat Act in case any area was excluded from a Panchayat circle. It was only not to come in conflict with the provisions of Section 86 of the Panchayat Act and to dispense with the procedure contained in that Section, the legislature specifically inserted the proviso to Section 4 of the Act with an extensive that the provisions of the Panchayat Act would not be followed, where such area is included or whole area of Panchayat is declared as a Municipality. The cases 1951 All England Law Reports (supra) & *Attorney General v. Moore* (supra) cited by Mr. Maloo have no application at all in the case in hand. There is no ambiguity in the language of the proviso and the intention of the legislature is more than clear in dispensing with the provisions of Rajasthan Panchayat Act. It has been held in *State of Rajasthan v. Mrs. Leela Jain and Ors.* (supra) as under:

so far as a general principle of construction of a proviso is concerned it has been broadly stated that the function of is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part. It is obvious that this is not the function of the proviso to Section

4(1) of the Act for the operative words in the main part of Section 4(1) prohibit all appeals from the appellate orders of the Commissioner. The primary purpose of proviso now under consideration is, it is apparent to prove a substitute or an alternative remedy to that which is prohibited by the main part of Section 4(1). There is, therefore no question as to the proving out any portion out of the area covered by the main part and leaving the other part unaffected.

What we have stated earlier should suffice to establish that the proviso in the accepted sense but an independent legislative provision by which to a remedy which is prohibited by the main part of the section and alternative proviso Provided it is, further obvious to us that the proviso is not coextensive with but covers a field wider than the main part of Section 4(1).

It, is also observed as under in *Hiralal Ratan Lal v. The Sales Tax Officer* (supra):

In construing a statutory provision the first and the foremost rule of construction is the literary construction. All that the Court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which the Court has held that despite the fact that a provision is called proviso. It is really a separate provision and so called proviso, has substantially altered the main section.

18. Thus I find no force in the contention of the learned Counsel for the petitioner that proviso to Section 4 of the Act is ultra vires to provisions of Section 4 of the Act or the State Government was bound to comply with the provisions of Section 86 of the Panchayat Act while issuing the impugned notifications.

19. In the result, I find no force in this writ petition and it is dismissed with no order as to costs.