

(1979) 06 KAR CK 0004
In the Karnataka High Court
Case No : WP 4376/79

Muddegowda and Others

APPELLANT

Vs

Divisional Commissioner and Others

RESPONDENT

Date of Decision : 08-06-1979

Acts Referred:

Karnataka Village Panchayats Declaration of Villages (Procedure) Rules, 1959 — Rule 7

Citation : (1979) 2 KarLJ 308

Hon'ble Judges : Puttaswamy, J

Judgement

1. In this petition under Art. 226 of the Constitution, the petitioners have challenged the validity of 3 Notifications bearing the same number two of the same date and another dated 4-4-1979 (Exts. A, B and, E).

2. In Notification No. VPC-2-G/MS/1/288/65-66 dated 8.1.1968 published in the Mysore Gazette (Extry) dated 17-1-1978, the Divisional Commissioner, Mysore Div., Mysore (hereinafter referred to as "the Commissioner") exercising the powers conferred on him by S. 3 of the Karnataka Village Panchayats and Local Boards Act, 1959 (hereinafter referred to as "the 1959 Act") inter-alia determined 3 group Village Panchayats called as Shivalli, Goravale and H. Malligere consisting of the villages detailed as under:

"Shivalli

Goravale Shivalli, Maradipura, Gunnaikanahalli;

Goravale, Sampenahalli, B. Maradevanahalli;

H. Malligere H. Malligere. Shambuvalli, B. Hosahalli Beeragowdanahalli."

In the said notifications Shivalli Group Village Panchayat consisted of 3 revenue villages called as Shivalli, Maradipura and Gunnaikanahalli and the village Goravale was not included in the said Group Village Panchayat On the other hand, Goravale was constituted as a, separate Group Village, Panchayat consisting of 3 revenue villages called as Goravale Sampenahalli and B.

Maradevanahalli. Sometime thereafter, it appears the revenue village Goravale was determined as a Village Panchayat in obedience to certain proceedings before this Court. From 8-1-1968 to 25-4-1978, Goravale revenue village, had next been included in the Shivalli Group Village Panchayat by the Government or by the Commissioner who had been delegated with the power to determine any single revenue village or a group of revenue villages as a Panchayat under the 1959 Act But in Notification No. VPC. ELN/1/78-79 dated 25.4.1978 (published in the Karnataka Gazette Extraordinary of the same date.) the Deputy Commissioner Mandya, purporting to determine the territorial constituencies of the several Group Village Panchayats of Mandya Taluk, Mandya, District, under sub-section (3) of S. 5 of the 1959 Act, also determined the territorial constituencies of Shivalli Group Village Panchayat. In determining the territorial constituencies, the Deputy Commissioner did not adhere to the earlier Notifications issued by the Commissioner but included Goravale in the Shivalli Group Village Panchayat and determined the constituencies for that Panchayat as if Goravale had been legally included in the Shivalli Group Village Panchayat. On the basis of the, said Notification of the Deputy Commissioner, elections were held on 8.7.1978 by the authorities to Shivalli Group Village Panchayat which was challenged before this Court by Sriyuths S.K. Somashekar and S.B. Kyathiah in WP on Nos. 9865 and 10379 of 1978. In the said writ petitions those petitioners challenged the validity of the Notification dated 25.4.1978 of the, Deputy Commissioner and the elections held to the Shivalli Group Village Panchayat. On 19.12.1978. I allowed the said writ petitions and made the following orders and directions:

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

(i) I quash the Notification No. VPC.ELN/1/78-79 dated 25.4.1978 (Exhibit "B") issued by the Deputy Commissioner, Mandya in so far as it relates to the determination of constituencies of Shivalli Group Village Panchayat consisting of Shivalli, Goravale, Maradipura, Gunnayakanahalli and direct him to determine the constituencies of Shivalli Group Village Panchayat consisting of Shivalli, Maradipura and Gunnayakanahalli as determined by the Divisional Commissioner in his Notification No. VPC. 2-G/MSD/1/288/65-66 dt. 8.1.1968 and thereafter take, all necessary steps to hold elections to that Panchayat in accordance, with law and complete the same with all expedition and positively on or before 30-4.1979. But the latter direction issued to the Deputy Commissioner is without prejudice to the power of the Government of Karnataka Divisional Commissioner, Mysore, to include, exclude or regroup any of the villages of Shivalli Group Village in accordance with law. In case either of them so decide to exercise their power with reference to Shivalli Group Village, as determined by the Divisional Commissioner on 8.1.1968, they shall do so and complete the same on or before 28.2.1979, on the basis of which the Deputy Commissioner, Mandya, shall determine the constituencies and complete the elections on or before 30.4.1979.

(ii) All those persons that have been elected and functioning as members,

Chairman or Vice Chairman of Shivalli Group Village Panchayat consisting of Shivalli, Goravale, Maradipura and Gunnayakanahalli as notified by the Deputy Commissioner on 25.4.1978 (Exhibit "B") shall continue to function till fresh elections are held and the elected members are declared as duly elected and the new Panchayat comes into being or till 30.4.79 whichever is earlier.

(iii) Rule made absolute.

Against my said order, the petitioners as also some of the respondents in those writ petitions filed appeals in W.A. Nos. 23, 40, 150, 151 and 152 of 1979 before this Court. In WA Nos. 23 and 40 of 1979 the petitioners who had substantially succeeded in their Writ Petitions, challenged, clause (ii) of the order made by me. In the other writ appeals some of the respondents challenged the entire order made by me. On 7.2.1979, a Division Bench of this Court disposed of the said appeals by a common order. By a common order, the appellate Bench while affirming clause (i) of the order made by me, set aside clause (ii) of the order in these terms:

"9. The learned counsel for the appellants in W.A. Nos. 23 and 40 of 1979 contended that having quashed the elections, the learned single Judge was not justified in permitting the members in such elections, the Chairman and the Vice-chairman elected by such members to continue as such till fresh elections were held or till 30.4.1979 whichever is earlier. We think that this contention is well founded. Once the elections were set aside, the members returned therein cannot continue as such except under an interim order of a court pending an appeal or against the order setting aside such elections. To avoid a vacuum in the functioning of the Panchayat it will be open to the authorities to appoint an administrator until fresh elections are held according to law.

10. In the result we dismiss W.A. Nos. 151 and 152 of 1979 and allow W.A. Nos. 23 and 40 of 1979 and modify the order of the learned single Judge by deleting the portion of his order which permitted the members so elected, the Chairman and vice-Chairman elected by such members to continue to function till fresh elections are held or till 30.4.1979.

3. Evidently having regard to the above orders of this Court, the commissioner who was free to redetermine the Group Panchayat of Shivalli issued two Notifications bearing the same number and date (Exts A and B). In the first Notification (Ext. A), the Commissioner declared that Goravale village notified as a separate Village Panchayat in pursuance of certain orders of this Court, shall cease to be a village with immediate effect. Shri Mohandas Hegde learned counsel for the petitioners, fairly stated that there is no merit in the challenge of the petitioners against this Notification and the same is liable to be rejected for which reason the question of determining its validity does not arise. By another Notification of the same date, the Commissioner, in exercise of the power conferred on him by Rule 6(1) and (2) of the Karnataka Village Panchayats Declaration of Villages (Procedure) Rules, 1959 (hereinafter referred to as "the

Rules"), proposed to declare the villages mentioned in the Annexure to that Notification as a Group Village Panchayat under the, Act and called for objections and suggestions thereto. The said Notification reads thus:

"In exercise of the powers conferred under Rule 6(1) and (2) of the Karnataka Village Panchayats declaration of Village (Procedure) Rules, 1959 delegated in Government Notification No. DPC 14 RDV 66 dated 22nd May, 1967, the Divisional Commissioner, Mysore Proposes to declare under sub-section (1) of Section 3 of the Karnataka Village Panchayats and Local Boards Act 1959 the area comprising a group of Revenue villages having a population of not less than 1500 but not more than 10,000 in Mandya Taluk Mandya District, as mentioned in the Annexure, as the village under the Act.

"All persons likely to be affected are hereby required to send their objections or suggestions, if any, to the Deputy Commissioner, Mandya District, Mandya, not later than 15 days from the date of publication of this Notification in the Karnataka Gazette.

Sd/-

* * *

Divisional Commissioner, Mysore Dn., Mysore.

ANNEXURE

Name of the District	Name of the Taluk	Name of the proposed village	Name of the revenue village in the proposed village	Population of each revenue village	Total population	Population of S.C. in each revenue village	Total S.C. population	Whether S.C. representation is necessary or not
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Population more than 1500 but not more than 10,000.

Mandya Mandya Shivalli 1. Shivalli 2,974 - 332 - -

2. Maradipura 311 - 13 - -

3. Gunnaikanahalli 657 - 24 - -

4. Goravale 2,340 6,782 146 515 yes

Sd/-

* * *

Divisional Commissioner, Mysore Dn., Mysore.

In response to the said Notification, the petitioners, respondents Nos. 3 to 7 and a large number of villagers of Shivalli, Maradipura. Gunnaikanahalli and Goravale filed their objections on or before the appointed date before the Deputy Commissioner, Mandya who was authorised to receive them On 13.3.1979, the. Commissioner, on a consideration of the objections and suggestions and the

reports received by him, decided to hear those persons that had filed their objections and suggestions on 3.4 1979 at 10.30 a.m. and issued necessary directions to notify the date of hearing to all those persons. In obedience to the said order of the Commissioner individual notices were issued to the persons that had filed their objections and suggestions. All the original notices dated 14.3.1979 addressed to the parties were forwarded to the Chief Executive Officer, Mandya Taluk, Mandya, for effecting services on the parties. From the records, it is now found that the Chief Executive Officer has been able to serve notices on a large number of persons, but has not been able to serve the notices on, all the persons that had filed their objections and suggestions. Learned counsel for the respondents, do not dispute that at any rate the 1st petitioner had not been served with the notice of hearing issued by the Commissioner.

4. The petitioners have asserted that they have not been notified of the date of hearing and they had no opportunity to represent their case and therefore the proceedings are vitiated.

5. Respondent Nos. 1 and 2 have filed a separate statement of objections denying the allegations made by the petitioners and have justified the action of the Commissioner. Respondent No. 7 has also filed a separate statement of objections justifying the action of the authorities.

6. In para 4, the petitioners have stated that the Commissioner was in a mortal hurry to conclude the proceedings at the behest of others and would not hear them and their learned advocates. Shri Jayakumar Anagol, Divisional Commissioner, working as the Divisional Commissioner of the Mysore Division has filed his affidavit denying the allegations of mala fides made by the petitioners against him. I have no reason to discard the assertions of Shri Jayakumar Anagol. Shri Mohandas Hegde also stated that the petitioners would not press their allegations against Shri Jayakumar Anagol. In this view, the question of examining that the order is vitiated by mala fides of the Commissioner is liable to be rejected and I reject the same.

7. Shri. Mohandas Hegde contended that the Commissioner having decided to notify those persons that had filed their objections and suggestions, was bound to notify all those persons and afford them an opportunity of hearing as required by Rule 7 of the Rules. Shri Mohandas Hegde maintained that the word "any" occurring in Rule 7 should be interpreted as all. He urged that on the admission made by the respondents that the 1st petitioner has not been notified the date of hearing and has not been afforded an opportunity of hearing, the proceedings were vitiated.

8. Learned counsel for the respondents refuted the contention of Shri Mohandas Hegde and urged that under Rule 7 of the Rules, it is open to the Commissioner to notify and hear such persons as may be decided by him and the failure to notify and hear the 1st petitioner does not vitiate the proceedings.

9. Rule 7 of the Rules confers the power on the Commissioner to give an

opportunity of hearing to any person who has filed his objections or suggestions only if he deems it necessary. Rule 7 does not cast an obligation on the Commissioner to notify and hear all those persons that have filed their objections and suggestions. Whether an opportunity of hearing should be given or not is a matter entirely for the Commissioner to decide. Whether the facts and circumstances of a given case call for an oral hearing is a matter exclusively for the Commissioner to decide and those that have filed their objections and suggestions cannot claim an opportunity of hearing as of right. Shri Mohandas Hegde does not dispute this legal position.

10. In the present case, the Commissioner had decided to notify and hear all those that had filed their objections and suggestions and has ultimately failed to notify and hear some of them. Now the question is whether the same was legal and valid. The material portion of Rule 7 that has a bearing on this question reads thus:

"After giving an opportunity to be heard to any person who has sent his objections or suggestions.

The word "any" occurring in Rule 7 in the context has to be interpreted as all those persons that had filed their objections and suggestions. In my view, it cannot be interpreted as conferring power on the Commissioner to notify and hear such person he may decide to notify and hear as contended by the respondents. Section 13 (2) of the Karnataka General Clauses Act, 1899 also supports the above construction and does not support the construction suggested for the respondents. Unless otherwise provided or the circumstances so justify the concept of hearing a case implies that all the parties to the case should be provided an opportunity of hearing and does not permit hearing such persons as the authority may decide to hear. For all these reasons, I am of the view that the construction suggested by the respondents is not warranted by the language of the Rules and the concept of a fair and proper hearing by the authority and is therefore liable to be rejected.

11. Admittedly, the 1st petitioner had not been notified of the date of hearing and had not been afforded an opportunity of hearing and was not also present at the hearing of the case by the Commissioner. In this view, the question whether the other petitioners and others were notified and heard loses all its significance. In these circumstances I have no alternative but to hold that the proceedings before the Commissioner culminating in the final Notification are vitiated.

12. Learned counsel for the respondents contended that whatever may be the illegality or irregularity before the Commissioner, this is not a fit case in which I should interfere with the proceedings. Learned counsel for the respondents urged that the objections and suggestions filed by the petitioners like not giving proper representation to their respective villages was wholly outside the scope of enquiry before the Commissioner and the failure if any to notify and hear any of them cannot be a ground for invalidating the proceedings. In answer to this

contention, Shri. Mohandas Hegde urged that the petitioners had opposed the inclusion of Goravale and had made various suggestions and therefore they were entitled for a hearing.

13. Learned counsel for the parties have taken me through the objections and suggestions filed by the petitioners. On an examination of their objections and suggestions filed before the Commissioner, it would be wrong to say that they are wholly outside the scope of the enquiry before the Commissioner. Whether there is any merit in any of the objections and suggestions filed by the petitioners is a matter primarily for the commissioner to decide. In this view, I hold that there is no merit in the contention of the learned counsel for the respondents.

14. Shri. Mohandas Hegde, in my opinion rightly, stated that the challenge of the petitioners against the preliminary Notification No VPC III.CR.253/78-79 dt. 7.2.79 (Ext.B) calling for objections and suggestions is unsustainable and cannot be upheld. In this view, the question of examining the validity of the said Notification does not arise. As I have not interfered with the said Notification, it is now open to the Commissioner to take all such steps as are necessary to finalise the said Notification in accordance with law and in the light of the observations made in this order.

15. In the light of my above discussion, I quash order No VPC III CR.253/78-79 dated 4.4.1979 (Ext.R1) and the final Notification No. VPC. III.CR.253/78-79 dated 4.4.1979 (Ext.E) of the Divisional Commissioner reserving him liberty to finalise the proceedings in accordance, with law and in the light of the observations made in this order.

16. Rule issued is made absolute.

17. In the circumstances of the case, I direct the parties to bear their own costs.

18. Shri G.R. Nataraj, learned High Court Government Pleader, is permitted to file his memo of appearance for respondent Nos. 1 and 2 within 15 days from this day.