

(2016) 02 KAR CK 0411

In the Karnataka High Court

Case No : Writ Petition No. 20069 of 2015 (LB-ELE)

Sharanabasanagouda Naregal

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Panchayat Raj Act, 1993 — Section 4(1), Section 4(2)

Citation : (2017) 1 AirKarR 228

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Sri. K.S. Patil, Government Pleader, for the Respondents; Sri. Mahesh Wodeyar, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

B. Veerappa, J. - The petitioner filed the above writ petition for writ in the nature of certiorari to quash the order dated 09.01.2015 insofar as the formation of Hosahalli as new Gram Panchayat, shown at Appendix-I at Sl. No.15 in Gadag District in Ron Taluk at Sl. No.3 which is marked as Annexure-A and also the order dated 04.02.2015 passed by the 3rd respondent, insofar as declaring Hosahalli as new Gram Panchayat, shown at SI. No.5 in Ron Taluk in Table-1, which is marked as Annexure-E and declare Jigalur as new Gram Panchayat and also to quash the order passed by the 2nd respondent which is marked as Annexure-G in the writ petition.

2. It is the case of the petitioner that the 3rd respondent acting on the basis of the Government order, exercising his power under Section 4 of the Karnataka Panchayat Raj Act, 1993 issued a Draft Notification dated 09.01.2015 calling for objections for the formation of new Gram Panchayat from any member of public, within ten days from the date of the Draft Notification i.e., 29.01.2015.

3. The petitioner is the permanent resident of Jigalur Village, Ron Taluk, Gadag District and the said Jigalur Village was previously coming under the jurisdiction

of Hosahalli Gram Panchayat head quarters. As per the Draft Notification, Jigalur Village included under the proposed new Gram Panchayat area namely Hosahalli declaring Hosahalli as head quarters for new Gram Panchayat, consisting of Hosahalli, Jigalur and Kalakapur. The petitioner and other residents of Jigalur Village filed objections on 22.01.2015 for inclusion of their villages in the proposed new Gram Panchayat area namely Hosahalli and requested for declaring Jigalur Village as Gram Panchayat area and its head quarters, contending that the population of the village as per 2011 census is 2113 and that of Hosahalli Village is 1796 which is lesser than the village as per Annexure - C. The petitioner also contended that the Jigalur Village is having all civic facilities like Post Office, Co-operative Society, Dairy, School up to 8th standard, Bus Stop, Nurse Quarters, Veterinary Hospital, Power Supply Station and the Jigalur Village is near to Taluk and District head quarters and also contended that the Jigalur Village has power supply station which transmits power to the five villages namely Hosahalli, Holealur, Chavadi, Sudi and Gajendragad etc.

4. Without considering the said material facts and objections filed by the petitioner and others, the respondent has passed the first order on 04.02.2015 for the formation of new Gram Panchayat in Gadag District, as per Annexure -E.

5. The petitioners further contended that the 3rd respondent without reference to the statement of objections filed by the petitioner, has passed an order on 04.02.2015 declaring Hosahalli Gram Panchayat as head quarters which is not a speaking order. Therefore, aggrieved by the order of the 3rd respondent, the petitioner and others staged dharana before the 3rd respondent's office and thereafter filed Revision Petition before the Regional Commissioner - 1st respondent under the provisions of Section 4(3) of the Karnataka Panchayat Raj Act, 1993 and the 1st respondent passed an order dated 09.03.2015 dismissing the Revision Petition and confirmed the order passed by the Deputy Commissioner. Against the said order, the present writ petition is filed.

6. I have heard the learned counsel for the parties to the lis.

7. Shri. Mahesh Wodeyar, learned counsel for the petitioner contended that the impugned orders passed by the respondents vide Annexures - A, E and in relation to the Hosahalli Gram Panchayat including the Jigalur Village as one of the Village in the Panchayat area, without considering the population wise as contemplated under the provisions of Section 4 (1) of the Karnataka Panchayat Raj Act, 1993. Further, he also contended that no individual notice has been issued to the petitioner and other villages and earlier Gram Panchayat i.e., Jigalur was suitable place for Gram Panchayat head quarters which provides all basic facilities. Therefore, he sought to quash the impugned orders.

8. Per contra, Shri. K.S. Patil, learned Government Pleader sought to justify the impugned orders passed by the respondent and contended that in view of the provisions of Section 4(1) of the Karnataka Panchayat Raj Act, 1993, population is not only the criteria and the Act does not contemplate individual notice, since

the State Government issued public notice which includes notice to all the persons and the petitioner cannot declare which is the area suitable for Gram Panchayat. It is for the Deputy Commissioner who is Competent Authority, taking into consideration surrounding circumstances and considering the provisions of Section 4(1) of the Karnataka Panchayat Raj Act, 1993 has to pass necessary orders. The Deputy Commissioner published Draft Notification. The petitioner and other villagers filed objections. Hence, the question of issuing individual notice does not arise. Therefore, he sought for dismissal of the writ petition.

9. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record.

10. It is not in dispute that the State Government issued notification to declare new Gram Panchayat area as per order dated 09.01.2015 and Gadag District also included at Sl. No.15. Subsequently the Deputy Commissioner by a Draft Notification dated 19.01.2015 declared Hosahalli in Ron Taluk at Sl. No. 18, Hosahalli Gram Panchayat head quarter for Hosahalli, Jigalur and Kalakapur. The Deputy Commissioner exercising the powers under the provisions of Section 4(1) and second proviso declared that Hosahalli Gram Panchayat as centre of the Gram Panchayat in respect of three villages. The second proviso of Section 4(1) of the Karnataka Panchayat Raj Act, 1993 reads as under :

"4. Declaration of Panchayat Area and establishment of Grama 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 five thousand and not more than seven thousand] to be a Panchayat area, may, after previous publication, declare such area as a Panchayat area for the purposes of this Act and also specify its headquarter :

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Provided further that irrespective of population, wherever it is found necessary, the Government, as a special case, may order that an area within [a radius of five kilometers (diameter of ten kilometers)] from the centre of a village may be so declared as a Panchayat area in such areas of the districts of Belgaum, Chickmagalur, Dakshina Kannada, Dharwar, Hassan, Kodagu, Shimoga, [Udipi, Haveri] and Uttar Kannada as may be specified by the Government :

Provided also that the Deputy Commissioner may, with the previous permission of the Government declare any area comprising a village or group of villages having a population of [either less than five thousand or more than seven thousand] to be a Panchayat area."

11. It is also not in dispute that before declaration of Hosahalli Gram Panchayat head quarter centre for the three villages, the Deputy Commissioner has issued Draft Notification inviting the general public and it is not the case of the petitioners that they were not aware of the Draft Notification. In fact, the

petitioners and other villagers have filed objections to the Draft Notification. After considering the Draft Notification, the Deputy Commissioner declared the Hosahalli Gram Panchayat as its head quarters. It is also not in dispute that the petitioner filed revision before the Regional Commissioner, as contemplated under the provisions of Section 4(3) of the Karnataka Panchayat Raj Act, 1993. After considering the entire material on record, the Regional Commissioner in the impugned order recorded a specific finding that Hosahalli Gram Panchayat has got all facilities of transport and it is in highway road and having all the Offices and it is a suitable place for Gram Panchayat and the said village is included in group Panchayat from 1963 to 1985 and there is Post Office since 1950 and there is Village Accountant Office, Primary Agricultural Co-operative Bank, Fair Price Depot etc. and Hosahalli is a centre for the other two villages namely Jigalur and Kalakapur. The distance between the Kalakapur and Hosahalli is 4 kms and Jigalur is also 4 kms. The Hosahalli Village is in between the Jigalur and Kalakapur. Accordingly, representation was considered and dismissed the Revision Petition by an order dated 10.03.2016. The jurisdictional Deputy Commissioner who is the Competent Authority under the provisions of Section 4(1) of the Act taking into consideration all the aspects, as contemplated under Sections 4(1) and 4(2) of the Karnataka Panchayat Raj Act, 1993 has declared that Hosahalli Gram Panchayat is Centre of Village Panchayat and the same has been affirmed by the Regional Commissioner exercising the powers under Section 4(3) of the Karnataka Panchayat Raj Act, 1993. Both the authorities concurrently held that Hosahalli Gram Panchayat is a convenient place for Gram Panchayat to other two villages which is the centre of village in between the other two villages. Therefore, no interference is called for.

12. This Court while considering the provisions of Section 4(3) of the Karnataka Panchayat Raj Act, 1993, in the case of Chickamuniswamy and another v. State of Karnataka and others reported in 1994 (4) Kar LJ 662, held that revision powers of the Commissioner are as wide as the original authority and the question of interference under Article 226 cannot be adjudicated by the High Court, unless the order is vitiated either by error of statutory law or constitutional law.

13. In the present case, the petitioner has not made out any ground of any violation of any statutory law or constitution law. Therefore, the impugned order passed by the respondent - Deputy Commissioner confirmed by the Regional Commissioner is in accordance with law.

14. In an identical circumstance, this Court in the case of Raghuvir v. The State of Karnataka made in W.P. No. 103636-103638/2015 dated 01.07.2015 held that declaration made by the Deputy Commissioner confirmed by the Regional Commissioner cannot be interfered by this Court under Articles 226 and 227 of the Constitution of India.

15. The Hon"ble Supreme Court while considering the provisions of Section 4(2) of the Karnataka Zila Pari shads, Taluk Panchayat Samithis, Mandal Panchayats

and Nyaya Panchayats Act, 1983 in the case of B.N. Shankarappa v. Uthanur Srinivas and others reported in AIR 1992 SC 836 held at paragraphs 7 and 8 as under :

"7. As pointed out earlier, Section 4(1) empowers the Deputy Commissioner to do two things, namely, (i) to declare an area as a Mandal, and (ii) to specify its headquarter. The word "also" preceding the words "specify its headquarter" cannot be understood to convey that the power once exercised would stand exhausted. Such a construction sought to be placed by counsel for the respondent does not accord with the language of the provision. It merely conveys that when the Deputy Commissioner constitutes a Mandal for the first time it will be necessary for him to specify its headquarter also. This power to specify the headquarter conferred on the Deputy Commissioner can be exercised from time to time as occasion requires by virtue of Section 14 of the General Clauses Act. The attention of the High Court was not drawn to the provision in Section 14 when it disposed of the Writ Appeal No. 2564 of 1987 and Writ Petition No. 375 of 1989 on 28th May, 1991. It is true that the power conferred by sub-section (2) of Section 4 can be exercised where there is a change in the area of the Mandal either by addition or reduction in the area. Under clause (c) of sub-section (2) of Section 4 the Deputy Commissioner is also invested with the power to alter the name of any Mandal. The scheme of sub-section (2) would, therefore, show that when there is any increase or decrease in the area of any Mandal, the Deputy Commissioner may, after the previous publication of the proposal by notification, exercise that power and rename the Mandal, if so required. The absence of the power in sub-section (2) of section 4 to specify the headquarter afresh does not necessarily mean that once the initial constitution of the Mandal takes place and the headquarter is specified the power is exhausted, notwithstanding section 14 of the General Clauses Act. If such an interpretation is placed on the scheme of section 4 of the Act neither the Deputy Commissioner nor any other authority will thereafter be able to alter and specify any other place as the Mandal's headquarter. Such a view would create a vacuum and even when a genuine need for specifying any other headquarter arises, the authorities will not be able to exercise power for want of a specific provision in the Act and that may lead to avoidable hardship and complications. It is, therefore, essential that we read the provision of the Act in a manner so as to ensure that such a vacuum does not arise and the power is retained in the concerned authority which can be exercised should a genuine need arise. In J.R. Raghupathy & Ors. v. State of A.P. others, [1988] 4 SCC 364 : (AIR 1988 SC 1681), this Court observed that the ultimate decision as to the place or location of Mandal headquarter is left to the Government to decide and conferment of discretion upon the concerned authority in that behalf must necessarily leave the choice to the discretion of the said authority and it would not be proper for the courts to interfere with the discretion so exercised. This is not to say that the discretion can be exercised in an arbitrary or whimsical manner without proper application of mind or for ulterior or mala fide purpose. If it is shown that the discretion was

so exercised it would certainly be open to the Courts to interfere with the discretion but not otherwise.

8. We are, therefore, of the opinion that if the situation so demands and there is justification for altering the place of headquarter, it would be open to the Deputy Commissioner to exercise power under Section 4(1) of the Act read with section 14 of the General Clauses Act to meet the situation. We, therefore, allow this appeal, set aside the impugned order of the Division Bench of the High court and restore the order of the learned single Judge directing that the writ petition, which gave rise to the writ appeal, shall stand dismissed. However, in the facts and circumstances of the case there will be no order as to costs."

16. In view of the aforesaid reasons, the grievance of the petitioner that the Deputy Commissioner has to consider population wise and no individual notice was issued and the earlier Gram Panchayat was suitable place cannot be considered, it is for the authorities to decide the suitability of the Gram Panchayat.

17. Based on the surrounding circumstances, considering the provisions of Sections 4(1) and 4(2) of the Karnataka Panchayat Raj Act, 1993, the Deputy Commissioner after following all procedures has declared Hosahalli Gram Panchayat as Panchayat Centre and same is affirmed by the Regional Commissioner. Both the authorities concurrently held that Hosahalli Gram Panchayat is suitable centre place which is the centre of other two villages which is based on the cogent material evidence on record.

18. Therefore, the petitioner has not made out any ground to interfere under Articles 226 and 227 of the Constitution of India. Accordingly, the writ petition is dismissed.