

(1982) 03 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 2969 of 1979

Sheshroa Bhauro Jadhav

APPELLANT

Vs

Commissioner, Aurangabad Division and Others

RESPONDENT

Date of Decision : 08-03-1982

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 4, 4(2), 4(3)

Citation : AIR 1985 Bom 256 : (1982) 2 BomCR 489 : (1982) 84 BOMLR 156

Hon'ble Judges : V.S. Deshpande, C.J.; Kanade, J.; D.B. Swahp Ande, J

Bench : Full Bench

Advocate : S.C. Bora, for R.M. Agrawal, for the Appellant; S.S. Chaoudhari, Govt. Pleader and S.G. Deshmukh, Asst. Govt. Pleader, for the Respondent

Judgement

V.S. Deshpande, C.J.—The petitioner was the Sarpanch of the Mali Wadgaon Village Panchayat. It happens to be a Group Village Panchayat of three villages, namely, Mali Wadgaon, Babhulgaon and Padalsa, named after the village of largest population. The inhabitants of the smaller two villages were dissatisfied with the working and wanted separate Village Panchayats. From 1971 onwards demands and representations were made to that effect.

2. Section 5 of the Bombay Village Panchayats Act 1958 (hereinafter referred to as "the Act") contemplates a panchayat for each village but section 4(1) thereof authorises the Government to declare any local area or group of, revenue villages as one village for this purpose and thereafter include or exclude any part of such area after consulting the (1) panchayat concerned and (2) the Standing Committee of the Zilla Parishad.

3. The then members of the Panchayat passed an unanimous resolution on 2nd September 1975 demanding such separation. It was supported by the Standing Committee of the Zilla Parishad. The Commissioner accepted it and give effect thereto by the four impugned notification dated 12th July 1979 u/s 4 of the Act. Under one of them. Mali Wadgaon is declared to be a separate village while under the other Babhulgaon and Padalsa are declared to be one separate village

for this purpose. Election of members of Panchayat was held afresh thereafter on 10th May 1978 i.e. about one year before these notifications. The petitioner was elected Sarpanch thereof on 19th September 1978. The Panchayat as constituted after election was not consulted before the impugned notifications. The Panchayat passed a contrary resolution on 18th October 1979 against such a separation. The Sarpanch has in his individual capacity challenged these four notifications, in this petition, on the ground of there being no effective consultation as required by section 4(2) of the Act.

4. Mr. Bora, learned advocate appearing for the petitioner, raised three contentions in support of this writ petition on these undisputed facts, namely, that (1) mere reliance on the resolution of the Panchayat cannot amount "consultation" as required u/s 4(2) of the Act, (2) no such action for separation could have been taken at any rate without consulting the present Panchayat which was in office on the date of separation viz. 12th July 1979, and (3) these notifications having been issued without notice to and without hearing, the individual members of the Panchayat compelled to vacate office on such bifurcation, are bad in law.

5. Coming to the first contention, it is not in dispute (1) that the powers of the State Government are now delegated to the Commissioner of the Division and (2) that he is under an obligation to consult the "Panchayat concerned" in addition to the Standing Committee for this purpose and (3) that he did not have any other communication with the Panchayat for this purpose except receiving the resolution of the panchayat dated 2nd September 1975. The question is whether this is adequate compliance with the requirement of section 4(2) of the Act. Mr. Bora contends that it is not, there being no (1) direct discussion, or (2) exchange of views by correspondence and (3) passage of time having made even the resolution of 1975 irrelevant in 1979.

6. Now, the Act does not set out any particular "concept" or mode of such "consultation" Ordinarily and broadly it means communication of the views between the consulted (Panchayat concerned) and the consultor, the Commissioner, on the subject and further exchange of thoughts thereabout. The extent, nature and importance of any consultation must depend on the subject, object and the context thereof, under a given statute. The Group Village Panchayat gave indication of its views on the subject of such separation and break up of the panchayat, by its resolution dated 2nd September 1975. The same was communicated to the Commissioner. The resolution was unanimous. It was supported by the Standing Committee of the Zilla Parishad. The Commissioner accepted the same. He had presumably no reasons to object to warrant further exchange of consultation came to an end with the acceptance of the Panchayat's resolution and the view by the Commissioner. Direct discussion is not an indispensable ingredient of any consultation, nor lengthy correspondence can be held to be "must" when it is found to be unnecessary in a given case. It is difficult to see any defect in the consultation process in this case.

7. This is not a case where initiative was taken by the Commissioner. The question of the Commissioner again referring the matter to the Panchayat for its opinion, therefore, does not arise. The obligation of the Commissioner to consult u/s 4(2) of the Act does not imply initiative being necessarily from him. Nothing really turns on who initiates the proposal, it depending on who really feels the need first. It is enough that views are exchanged.

8. The fact that processing of the proposal at different levels took about four years from 2nd September 1975 to 12th July 1979 by itself cannot be of any significance. The Act does not prescribe any period of limitation much less the effect of delay. It takes time for the wheels of the Government machinery to move. Mr. Choudari, learned Government Pleader, contends that no case of mala fides or the delay being otherwise objectionable is made out. The process of consultation in this case is not shown to suffer thus from any infirmity whatsoever.

9. Mr. Bora then contends that reliance on 12th July 1979 by the Commissioner on the resolution of the Panchayat dated 2nd September 1975 cannot amount to consultation because intervening elections had changed its complexion. The resolution could not reflect the mind of the newly elected members and as such the Panchayat passing the resolution had ceased to be the Panchayat "concerned" on the date of the Commissioner's decision. Mr. Bora relied on a Division Bench judgement of this Court in Village Panchayat, Dharna Wadhona, Buzruk and Others Vs. Commissioner, Nagpur Division, Nagpur and Others, . The ratio of this judgment does support Mr. Bora. The reference of this case to the Full Bench became necessary because the Division Bench before whom the case was urged, initially felt doubt about the correctness thereof.

10. The Village Panchayat in Dharna's case (supra) had passed a resolution for break up of the Panchayat on 18th July 1961. After elections thereafter, the Panchayat passed a contrary resolution on 7th December 1964. The Commissioner issued the impugned notification u/s 4 separating the villages thereafter on 2nd December 1965. Neither the newly elected Panchayat was consulted much less its members individually. The Court held that the notification was bad in law for want of (1) consultation with the Panchayat as constituted on the date of decision after elections and (2) opportunity to such individual members affected to show cause against such break up. The discussion in Paragraph (14) shows that the Court was satisfied that 1961 resolution of the Panchayat was ever placed before the Commissioner. This amounts to a finding that there was no consultation with even the Panchayat as existed before elections of 1963 or constituted thereafter. This finding of fact was enough by itself to support the petitioner's case therein and decision on the law points raised was really unnecessary. This apart, we find it difficult to agree with the view that the Commissioner was under any obligation to verify the views of the Panchayat after the elections were on the record or that the members vacating the office consequent to break up of the Panchayat were entitled to any

independent hearing. With great respect, such a view is not warranted by the wording of section 4 of the Act and Mr. Bora could not draw our attention to any principle or authority for such a proposition. The discussion in paragraphs (15) and (16) is too scanty to afford any linking of the principle underlying the said view.

11. The contention of Mr. Bora that the Panchayat concerned means the Panchayat as constituted on the date of decision is fallacious. The underlying assumptions that the identity of the Panchayat changes with every election or its views or opinions on the date of the Commissioner's decision alone are relevant are entirely misconceived. Panchayat is a corporate body u/s 9 of the Act and is contemplated to have perpetual succession. Elections merely enable the villages to return new members periodically to conduct its affairs. Its identity remains unchanged as the vesting of the assets and liabilities and rights and obligations under the contracts. Its resolutions and decisions remain the same and binding till the same are cancelled or rescinded in accordance with the procedure. The words "Panchayat concerned" are intended to fix the identity of the Panchayat affected by the proposal to split or merge and not the identity of the members fluctuating at the elections.

12. The resolution dated 2nd September 1975, not having been rescinded till the Commissioner's notification dated 12th July 1979, continued to be a valid, effective and binding decision of the Panchayat "concerned". The Commissioner was justified in relying on it, as the authentic view of the said Panchayat, notwithstanding the election in 1978 and changes in the personnel involved therein, and acting thereon. We are not concerned in this case with a contingency in which newly elected body rescinds the earlier decision before the Commissioner acts on it. The effect of any such contingency would depend on variety of factors. Thus the underlying assumption of the Panchayat passing resolutions and the one coming into existence after elections, being different is thoroughly misconceived.

13. The assumption then, of the date of the Commissioner's decision being relevant in this context is equally erroneous. We have seen how the resolutions or decisions of any Panchayat reflecting its views on different subjects continue to be its effective and binding resolutions or decisions even after the elections. If the Panchayat continues to be the same after elections, all its such decisions continue to reflect its opinions till at any rate the same are cancelled or rescinded. The Commissioner will be justified in relying on it as being the Panchayat's views on the date of the decision, though the decision was arrived at a few years before that date. We have already indicated how the effect of cancellation of such resolution and its communication to the Commissioner before his decision, does not fall for consideration in this case as its precise effect would depend on several other factors. We are unable to see how the date of decision of the Commissioner can be relevant in this context. It must be borne in mind that some time, if not four years, between the resolution of the Panchayat

and the final decision of the Commissioner, is bound to elapse without regard as to whether the proposal is initiated by the Panchayat or the Government or the Commissioner. It is impossible to conceive of the Panchayat and the Commissioner deciding the matter on the same day. The only requirement of the section is that there should be consultation. It is unnecessary to have fresh resolution if the Commissioner is already having one resolution on his record.

14. It is equally fallacious to assume that the Commissioner is under any obligation to ascertain the current views of the Panchayat on the date of his decision to make the consultation effective. This assumes that the views communicated to him earlier by the Panchayat on its own initiative or in response to query by the Commissioner, cease to be valid, effective and current. It is not possible to trace any basis for any such assumption. This would indeed invoice acting in a circle as some time is bound to elapse between such correspondence itself. Secondly, it would introduce some element of uncertainty where a resolution happens to have been passed by a narrow majority or majority of fickle-minded persons. It is one thing to take notice of the cancellation initiated by the Panchayat of its own and quite another when it is purported to do so on such query by the Commissioner. Such uncertainty may prove to be injurious to the functioning of the Panchayat and the Panchayat in that case would cease to have any binding and effective resolution on the subject and the Commissioner may find it difficult to have any effective and binding views of the Panchayat to act upon and consultation itself may become unworkable.

15. The third contention of Mr. Bora also appears to be equally misconceived though finds support in the ratio of Village Panchayat, Dharna Wadhona, Buzruk and Others Vs. Commissioner, Nagpur Division, Nagpur and Others, It is true that the member lose the status of an elected member and rights and privileges flowing therefrom, when they are required to vacate the office on the separation and virtual dissolution of the Panchayat. Their claim to be heard before being required to face such a loss and the adverse effects, if considered in isolation, is attractively plausible, as denial thereof apparently smacks of the breach of rules of natural Justice. Validity of such a claim, however, has to be weighed and evaluated by reference to their relative importance under the overall set up of the Act and its governing object. In the first place, action u/s 4 of the Act is essentially of an administrative and not of an adjudicative nature. Contemplated consultation is aimed at ascertaining the representative opinion of the people as far as possible. This is the practical substitute for the principles of natural justice on the possible limited scale. Secondly, all the members of then Panchayat get on opportunity to have their say when the proposal is discussed at its meeting before the resolution is passed. Members elected thereafter must be deemed to be aware of much previous decisions, and to have accepted the office with its implications and possible consequence. They cannot complain of any adverse effect if the same flow naturally from such previous decisions. Thirdly, such individual interests of the members have always to yield to the overall interests of the Panchayat in the event of any conflict between them. Fourthly, the

requirement of vacating office and consequential loss of status and benefits cannot be held to be adverse when such dissolution of the Panchayat or separation, flows from its legally effective decision and out of their own acts of commission or omission. Continuance of such membership is incompatible with the required dissolution of the Panchayat on exclusion or inclusion of any local areas. The members cannot claim any independent right against such dissolution, separation or merger, if the decision is arrived at in accordance with the statutory provisions.

16. Then, section 4(2) of the Act contemplates consultation with (1) the Panchayat concerned and (2) the Standing Committee. Omission of the requirement of consultation with the members individually clearly demonstrates legislative intent to exclude them from consultation and the principles of natural justice involved in a limited scale. No question of their breach can arise, when there is implied or express exclusion thereof under the statute. This is just in keeping with the legislative policy in the matter of corporate bodies created under different enactments. No right of being heard against the proposal to supersede or divide is conferred on the individuals liable to be affected thereby under the concerned statutes though Corporations are so armed with such rights. Such exclusion, to our mind, appears to be deliberate in view of the above considerations. The contention thus is devoid of any merit.

17. With a great respect, we are unable to agree with the views (1) that the members of the Panchayat individually can claim any right of being heard on any such proposal of separation u/s 4 of the Act, apart from what they are entitled to say at the meeting of the Panchayat, or (2) that opinion of the Panchayat at the date of Commissioner's decision alone is relevant u/s 4(2) or (3) that the newly constituted Panchayat is entitled to independent consultation, even when the Panchayat itself initiated the proposal or it was consulted in regard to the same before the elections. We have indicated reasons for our different conclusions. Any expansion of the scope of "Consultation" in disproportion of the relative importance of the factors involved is bound to be obstructive of the process and defensive of the very underlying object. With great respect, we differ and are unable to follow the ratio of the judgement in Dharna's case.

18. The result is that the writ petition fails and is dismissed without any order as to costs.

19. Petition dismissed .