

(2016) 01 KAR CK 0256

In the Karnataka High Court

Case No : Writ Petition Nos. 19835-837/2015 and 202970-973/2015 (LB-RES)

Shivaji and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 4

Citation : (2016) 3 AirKarR 741 : (2016) ILRKarnataka 985 : (2016) 3 KantLJ 44 : (2016) 4 KCCR 3767

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Ameet Kumar Deshpande, Advocate, for the Appellant; A. Syed Habeeb, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—1. Common questions of law and that of fact arise for decision making, hence, with the consent of the learned counsel for the parties, petitions are clubbed together, finally heard and disposed of by this order.

2. W.P. Nos. 19835-19837/2015 are filed by residents of Ujani calling in question the order dated 02.05.2015 of the Regional Commissioner, Kalaburagi Division, Kalaburagi in file No. RCG/ZP/Appeal/246/2014-2015 Annexure-F.

3. W.P. Nos. 202970-973/2015 are filed by residents of Medpalli calling in question the very same order of the Regional Commissioner.

4. The fact that Ujani was the headquarters of the Gram Panchayat ever since 1957 upto 1986 is not seriously disputed. Ujani is said to have a population of 1536 as per the census of the year 2011, a high school, an Anganwadi Centre, a Post Office, a Prathamika Krishi Pattina Sahakari Co-operative Bank, public bus stand, public library, linemen quarters, Village Accountant's office and is located at kilometer 45 of State Highway No. 122 i.e. Bidar ? Murki Hangarga, with three Gram Panchayat members.

5. Medapalli is said to have a population of 1112 while Gandhi Nagar has a population of 732 as per the census of the year 2011. It is asserted that Gandhi Nagar is a Tanda attached to Medapalli. In addition, it is stated that Medapalli is at equal distance to both Gudapalli and Ujani.

6. On the special orders of the State Government, the Deputy Commissioner, Bidar, issued a publication dated 19.01.2015 duly gazetted in the Karnataka Gazette of even date proposing to declare Ujani as the headquarters for the Gram Panchayat consisting of four villages namely, Ujani having a population of 1538; Medapalli having population of 1112; Sankanal having a population of 805 and; Gudapalli having a population of 1601, totaling to 5054. In the said publication it was notified that Chikli (G), a Gram Panchayat was consisting of Chikli (G) with population of 4020 and Gandhi Nagar with population of 732.

7. Villagers of Gudapalli filed objections to the notification on the premise that the population of the said village in the 2011 census is 1601, located nearest to the State Highway at a distance of 3.5 Kms., having a Cluster Resource Centre, Higher Primary School upto 8th Standard, Milk collection centre and four panchayat members.

8. The Deputy Commissioner having considered the objections, by order dated 04.02.2015 exercising jurisdiction under Section 4 of the Karnataka Panchayat Raj Act, 1993 (for short the "KPR Act") declared Ujani as the headquarters, which when called in question, by respondent Nos. 4 and 5 in W.P. Nos. 19835-19837/2015, invoking the Appeal jurisdiction under sub-section (3) of Section 4 of the KPR Act, before the Regional Commissioner, who it is stated, passed an order modifying the order of the Deputy Commissioner and declaring Gudpalli as the headquarters of the Gram Panchayat of Ujani by order dated 10.03.2015. That order when called in question in W.P. No. 202590/2015 by the petitioners, herein, a learned Single Judge set aside the order and remitted the proceedings for consideration afresh by the Regional Commissioner after extending reasonable opportunity of hearing to all concerned.

9. On remand, the Regional Commissioner is said to have extended opportunity of hearing to all the parties and having secured reports from the Assistant Executive Engineer of Public Works Department, passed the order dated 10.03.2015 declaring Gudpalli as the headquarters of Ujani Gram Panchayat. Hence these petitions.

10. On 07.01.2016 when the petitions were heard, the Regional Commissioner, Kalaburagi was directed to be present before Court along with the file. On 08.01.2016 the following order was passed:

"Sri Amlan Aditya Biswas, the Regional Commissioner is present along with records and submits that the letter Annexure-N of Sri N. Dharma Singh, former Member of Parliament was received and is on file and that he received a telephone call from a person claiming to be the Member of Legislative Assembly, Aurad taluk, threatening to hold a Dharna in front of his office in the event the

headquarters of the Panchayat is not shifted from Gudapalli to Ujani. The Commissioner further submits that though pressure was exerted by politicians, nevertheless undauntedly made enquiries relevant for the issue in question, secured material particulars from authorities and after extending reasonable opportunity of hearing to all the parties and their representatives, passed the order impugned.

To a question of this Court, the Regional Commissioner is candid in his submission that all material particulars are wanting in the order impugned and that the statements therein are an essence of all such material relevant for decision making.

The Regional Commissioner's presence is dispensed with.

Re-list on 18.01.2016 for dictating judgment."

11. The question as to whether Ujani or Gudapalli or Medapalli should be the headquarters for the Gram Panchayat when considered by the Regional Commissioner required recording of reasons, findings and conclusions. The submission of the Regional Commissioner, who was present before Court, as recorded supra, is in the direction of establishing material infirmity i.e. order impugned does not animate all material particulars reckoned in that regard.

12. What is relevant for consideration in these petitions is the fact that the Deputy Commissioner having published in the official gazette the proposal to declare Ujani as the headquarters for the Ujani Gram Panchayat, exercising jurisdiction under sub-section (1) of Section 4 of the KPR Act, followed by the notification dated 04.02.2015 Annexure-C4 declaring Ujani as the headquarters, the Regional Commissioner revised and modified the said order in exercise of Appeal jurisdiction under sub-section (3) of Section 4 of the KPR Act. In that view of the matter, the Regional Commissioner, it is needless to state, was required to assign reasons, findings and conclusions to come to a different decision than what was recorded by the Deputy Commissioner.

13. In *Commissioner of Police vs. Gordhandas Bhanji*, AIR (39) 1952 SC 16 at page 18, the Apex Court having regard to public orders observed thus:

"Public orders, publicly made, in exercise of statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

14. In *Mangalore Ganesh Beedi Works vs. Commissioner of Income Tax, Mysore*, (2005) 2 SCC 329 the Apex Court observed that recording of reasons is a part of fair procedure. Reasons are harbinger between the mind of maker of the decision in the controversy and the decision or conclusion arrived at. It is stated that they

substitute subjectivity with objectivity. As observed in *Alexander Machinery (Dudley) Ltd. vs. Crabtree* 1974 ICR 120 (NIRC) failure to assign reasons tantamounts to denial of justice.

15. In *Woolcombers of India Ltd. vs. Woolcombers Workers Union and another* , (1974) 3 SCC 318 the Apex Court observed thus:

"5. The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion."

16. In *State of Orissa vs. Dhaniram Luhar* , (2004) 5 SCC 568 the Apex Court observed that reason is the heartbeat of every conclusion and without the same it becomes lifeless.

17. It is elsewhere stated that giving of reasons encourages a careful examination of the relevant issues, the culmination of extraneous considerations and consistency in the decision making. If those entitled to know and be heard, have no right to know how the authority resolved the issues in dispute at the hearing, they may well regard as an empty ritual their legally conferred opportunity to be heard and to influence the authority by producing witnesses and other evidence to establish the relevant facts, advancing arguments on the proper exercise of any discretion and resolution of any legal questions and challenging their opponent's case. Unless the authority makes findings on disputes as to fact, explains the exercise of discretion by indicating the considerations that it has taken into account and relevant weightage assigned to each one of them and give its answers, to any questions of law, there can be no assurance that the authority discharged its obligations to base its decision upon the material presented at the hearing rather than on extraneous considerations.

18. A decision is irrational in the strict sense of that term, if it is unreasoned, if it is lacking ostensible logic or comprehensible justification. Absurd or perverse decision may be presumed when no reasons are assigned.

19. Having given my anxious consideration to the aforesaid settled principles of law in the matter of assigning reasons and applying the same to the order impugned, suffice it to notice that it is not a speaking order since it does not contain reasons and findings except conclusion tantamounting to denial of justice to the petitioners.

20. Without dwelling into the merits or demerits of the claims of the writ petitioners and that of the contesting respondents, the order impugned deserves interference for not assigning reasons.

21. In the result, these petitions are allowed. The order impugned is quashed

and the proceeding remitted for consideration afresh by the Regional Commissioner after extending reasonable opportunity of hearing to all concerned and to pass orders strictly in accordance with law and in the light of the observations supra, in any event by 27.01.2016. Parties since represented by learned counsel are directed to be present before the Regional Commissioner on 27.01.2016 at 3.00 PM without further notice.