

(1987) 09 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No's. 2595 and 8977 of 1987

Venkatraman Subray Raysad

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 24-09-1987

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 4 (1), 4 (2), 4 (3)

Citation : (1988) ILR (Kar) 449 : (1988) 1 KarLJ 222

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : S.R. Hegde Hudlmene and R.G. Hegde, for the Appellant; B.J. Somayaji, HCGP for R-1 and R-2, for the Respondent

Judgement

Bopanna, J.—These 2 Writ Petitions are disposed of by a common order since the parties are same in both these petitions and the subject matter of dispute is more or less the same in both these petitions.

2. In W.P.No. 2595 of 1987 the petitioner has sought for a writ in the nature of mandamus directing the 1st respondent to hold fresh election consequent on the order of the Divisional Commissioner produced as Annexure "C" in the Writ Petition. By this order the Divisional Commissioner had set aside order of the Deputy Commissioner, Karwar, dated 24-12-1986 made in pursuance of Section 4(2) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (in short the Act).

3. In Writ Petition No. 8977 of 1977 the petitioners who are the successful candidates in the election to the Mandal Panchayats of Sugavi and Gudnapur after the Deputy Commissioner made the declaration constituting the Mandal for Sirsi Taluk pursuant to the power conferred on him u/s 4(1) and (2) of the Act have questioned the validity of the order of the Divisional Commissioner setting aside the declaration of the Deputy Commissioner on the ground that the same is violative of the principles of natural justice since the petitioners were not made

parties before the Divisional Commissioner. So in W.P.No. 2595 of 1987 whether the petitioner can seek a writ in the nature of mandamus directing the Deputy Commissioner to hold fresh election and thereby give effect to the order of the Divisional Commissioner under Annexure "C" arises for consideration and in W.P.No. 8977 of 1987 whether that order of Divisional Commissioner is violative of the principle of natural justice arises for consideration.

4. Learned Counsel for the petitioner in W.P.No. 2595 of 1987 who is the 3rd respondent in W.P.8977/87 maintained that the order of the Divisional Commissioner in exercise of the powers u/s 4(3) of the Act is neither a judicial order nor a quasi judicial order; but an order made in exercise of the powers to make conditional legislation and, therefore the petitioners in W.P.No. 8977 of 1987 who have come on record in the first petition were not necessary parties before the Divisional Commissioner and hence they cannot complain of the violation of the principles of natural justice. In support of this contention he relied on 3 decisions of this Court rendered on a consideration of Section 4(3) of the Act. There is no dispute and it cannot be disputed that the provisions of Section 4(3) of the Act confer on the Divisional Commissioner a power to make conditional legislation by revising an order of the Deputy Commissioner u/s 4(1) of the Act to declare any area comprising a village or group of villages having a population of not less than 8,000 and not more than 12,000 to be a mandal subject to the conditions mentioned therein. The power to amend the earlier declaration u/s 4(1) of the Act is also conferred on the Deputy Commissioner u/s 4(2) of the Act. That power has to be exercised after previous publication of the proposal by notification. u/s 4(3) of the Act, the Divisional Commissioner on the application made within 30 days from the date of the notification by any person aggrieved by such notification, or suo motu, and after giving a reasonable opportunity of being heard to the applicant or to the mandals concerned revise the orders of the Deputy Commissioner under Sub-section (1) or Subsection (2) of Section 4 and pass such order orders that may be necessary as provided for under the latter portion of Sub-section (3). The cases on which the learned Counsel has relied are cases which arose for consideration before the elections to the Mandal Panchayats took place under the revised notification made by the Divisional Commissioner in exercise of his power u/s 4(3) of the Act, that is to say, the members of the Mandal Panchayats had not been elected pursuant to the notification constituting the mandals for the purpose of holding Mandal Panchayat elections. In that context, this Court in the aforesaid decisions has consistently taken the view that it is not necessary to hear all the villagers who are residents of a mandal who feel aggrieved by the revised constitution by the Divisional Commissioner. But, on the facts before this Court, the respondents who have come on record and who are elected as members of the Mandal Panchayat are affected by the order of the Divisional Commissioner made pursuant to the power conferred on him u/s 4(3) of the Act. Therefore; the decisions of this Court reported in KALE GOWDA AND OTHERS v. STATE OF KARNATAKA & ORS 1986 (2) KLJ 253 that of the Division Bench affirming the

order of the learned Single Judge in Bhadregowda Vs. State of Karnataka, and the decision in W.P.No. 4289 of 1986 disposed of on 1-10-1986 are all cases which negated the right of the villagers of a Mandal to be heard by the Divisional Commissioner u/s 4(3) of the Act. But, in this case the facts are different. The respondents had successfully contested the elections under the earlier declaration made by the Deputy Commissioner and they were elected as members of the Mandal Panchayat in question. Pursuant to that declaration, they were eligible to contest from their respective wards and, therefore, by virtue of their success in the elections they have a vested right to continue as members of those Mandal Panchayats. So, without hearing them, the Divisional Commissioner could not have made the order u/s 4(3) of the Act which in effect has taken away their right to continue as Members of the Mandal Panchayat in question. A similar point came up for consideration in the Gauhati High Court in DR. NIRENDRA MOHAN GUHA v. STATE OF ASSAM AND ANOTHER AIR 1972 Gau 104 under the provisions of the Assam Municipal Act, 1956. The Division Bench consisting of Goswami, C.J. as he then was has observed in para 12 of the judgment that where while admitting the Writ Petition challenging the notification fixing the date for by-election to a municipal ward, the by election was not stayed, the member, elected during the writ proceeding, should be impleaded in the proceeding for, if the petition were allowed, his interests would be affected. The facts in that case may not be apposite for deciding the point in issue in this case. But, all the same the principle that could be discerned from that case is that during pendency of the proceedings before the Divisional Commissioner, if the impleaded respondents had been elected as the members of the Mandal Panchayat, their right could not have been taken away, without hearing them, by an order made u/s 4(3) notwithstanding the fact that the Divisional Commissioner had been conferred with the power of making conditional legislation. Though Section 4(3) does not in terms make any provision to meet such a contingency, it is implicit in the very nature of the provisions, that rights of elected representatives under an earlier declaration u/s 4(1) and 4(2) which also amounts to conditional legislation, could not be taken away by a later order in the form of conditional legislation. So it was necessary for the Divisional Commissioner to issue notices to the impleaded respondents before making an order u/s 4(3) of the Act.

5. Learned Counsel for the petitioner in W.P.No. 2595/87 has also relied on a decision of this Court in VISHWANATH. N v. STATE OF KARNATAKA & OTHERS 1979 (2) KLJ 265. The Division Bench relying on certain decisions in B. Gopalaiah and Others Vs. Government of Andhra Pradesh and Another, and The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, has held that where the primary question involved in the Writ Petitions was the necessity for the appellants to pass the prescribed examinations on the date on which the respondents were promoted and the validity of the decision of the State Government refusing to consider the cases of the appellants on the ground that they had not passed the prescribed examinations, persons who had since been promoted on the basis of the

impugned decision of the State Government cannot be said to be necessary parties. This Court relied on the observations made by the Supreme Court following the decision of Chinnappa Reddy, J. as he then was in *B. Gopalaiah and Others Vs. Government of Andhra Pradesh and Another*, thus:

"The learned Government Pleader, however contends that the persons who are likely to be affected if the Memorandum is struck down, namely, the teachers in the other Municipal Schools are not before the Court and therefore this Court should not interfere. I cannot agree. This is not a case of discrimination of individual against individual. This is a case where a whole class of citizens have been discriminated against and the Court cannot refuse to give relief to them on the ground that the class of persons who will be benefited as a result of the discrimination are not before the Court. The person who complains of discrimination cannot be expected to search the country for all persons who are likely to be benefited by its discriminatory policy. Of course, if the discrimination is in favour of an individual against an individual different considerations might arise. But this is not such a case. In my opinion, where a scheme formulated by the Government is attacked on the ground of its being discriminatory, the position is precisely the same as if a statute is attacked as being discriminatory and it can never be an answer to such an attack that persons likely to be benefited by a discriminatory statute should be brought before the Court before the statute is struck down."

In *BHASKAR TOURING TALKIES & OTHERS v. STATE OF KARNATAKA & OTHERS* 1979 (1) KLJ 215 Rama Jois J. has taken the view that when the validity of an enactment or rule is challenged, the only necessary party is the State or the authority, who had enacted the law or made the rule. Even if the legislation or rule is intended for the benefit of any particular persons, such persons cannot be considered as necessary parties to the petition challenging the validity of the law or rule.

6. These are all cases which rest on a different matrix of facts. In the case on hand what was before the Divisional Commissioner was the Constitution of Mandals in terms of the declaration of the Deputy Commissioner. That declaration of the Deputy Commissioner rested on certain questions of facts depending on the location of the villages, convenience of the villagers, easy access to the headquarters from the respective mandals and other relevant factors. These are purely questions of fact which could have been properly appreciated by the Divisional Commissioner and adjudicated by him if the persons who had been elected pursuant to the earlier declaration had been heard. In my view, the impleaded respondents who had become elected members of the Mandal Panchayat from the concerned wards pursuant to the declaration of the Deputy Commissioner have sufficient interest to contest the proceedings before the Divisional Commissioner. The elected members may be villagers, but they are villagers who have a right to continue as members of the Mandal Panchayat till the expiry of the period fixed under the Act. Therefore, the impugned order

produced as Annexure "A" in W.P.No. 8977 of 1987 is liable to be quashed since the same is violative of the principles of natural justice. It is accordingly quashed.

7. That takes me to the other Writ Petition, i.e., W.P.No. 2595 of 1987. In view of the fact that I have quashed the order of the Divisional Commissioner in W.P.No. 8977 of 1987 which is produced as Annexure "A" in that Writ Petition, the prayer for a writ in the nature of mandamus to respondent-1 in W.P.No. 2595 of 1987 does not arise.

8. Accordingly, Writ Petition No. 8977 of 1987 is allowed and the impugned order is quashed. Writ Petition No. 2595 of 1987 is dismissed.