
(1983) 02 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1261 of 1982

Vishwa Nath

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-02-1983

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 4(1)
Rajasthan Panchayat Act, 1953 — Section 86, 88

Citation : AIR 1983 Raj 188 : (1983) RLW 197 : (1983) WLN 127

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : B.L. Sharma, for the Appellant; K.S. Rathore, Advocate-General and N.L. Jain, for the Respondent

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—This is a writ petition filed by a citizen of Mandrela town, Tehsil Chirawa. District Jhuniunu of Rajasthan State. The State of Rajasthan vide notification D/- the 2nd May, 1976 established the Municipal Board Mandrela which included the area of revenue vil lage of Mandrela and which earlier was a Panchayat. The population of Mand rela town as per 1980 year census is 9,299 and it is said to be having urban oriented complex as there are Government hospitals, private medical elinics. higher secondary and middle schools including primary and adult education centre, private schools, branches of Bank, of Baroda, post offices, telephone ex change office. Junior, Engineer, State ; Electricity Board and water supply offices, etc.

2. On 26th June; 1981. a notification was issued u/s 6(1) of Rajasthan Municipalities Act, 1959 (hereinafter referred to as "the Municipalities Act") by the State Government expressing its intention t0 convert the Municipality of Mandrela town into a Panchavat. The residents of Mandrela town objected to it and the petitioner also filed the objections. The case of the petitioner, here, is that no inquiry was conducted and objections were not considered objectively.

3. On 1st July. 1982. another notification was issued, which has been published in the Rajasthan Extraordinary Gazette (Part 6K) on 3rd July. 1982. u/s 4 of the Municipalities Act convertina the Mandrela Municipality into a Panchayat. This conversion of Mandrela Municipality into Panchayat has been challenged by the petitioner precisely on the ground that no notification has been issued under the Rajasthan Panchavat Act. 1953 and, therefore, a valid Panchavat cannot come into existence.

4. On 18th January. 1983. this case was heard at length and it was pointed out to the learned Advocate-General. Shri N.L. Jain, who appeared in the case, that, prima facie, the case nowhere involves any Question of Panchavat area's inclusion into Municipality nor. there is any case of declaring whole or part of Panchayat circle as Municipality and. therefore, the amendment introduced to Section 4 of the Municipalities Act cannot apply.

5. The learned Advocate-General, confronted with the above, wanted to study whether by any other law or amendment in Municipal Law. the impugned notification can be justified.

6. Section 4 (i) of the Municipalities Act reads as under:--

"4. Delimitation of Municipalities.--(i) Subject to the provisions of Sections. 5 and 6. the State Government may. from time to time, by notification in the official Gazette:--

(a) declare any local area to be a municipality:

(b) define the limits of any municipality:

(c) include or exclude any area in or from any municipality:

(d) otherwise alter the limits of any municipality:

(e) declare that any local area shall. from a date to be specified in the notification, cease to be a municipality.

"Provided that for including in any municipality the whole or a part of a Panchavat circle or for declaring the whole or part of a Panchavat circle as a Municipality, it shall not be necessary to observe and follow the procedure laid down in the Rajasthan Panchayat Act. 1953 (Rajasthan Act XXI of 1953) for excluding the whole or part of any Panchayat circle from any Panchavat or for declaring that any such Panchavat circle has ceased to be a Panchavat notwithstanding anything contained in any judgment or order of any Court."

7. A proviso was added to it by Section 2 of the Raj. Municipalities (Second Amendment) Act. 1974 (Raj.) Act No. 21 of 1974) vide notification No. F.2(27) Vidhi 74 dated 21st Sept.. 1974 published in Raj Gaz. Extraordinary Part IV-A dt. 21-9-74 at pp. 111 to 122 and came into force w.e.f. 11th May. 1974 when the Rajasthan Ordinance No. 7 of 1974 commenced. This proviso has been reproduced above.

8. The learned Advocate-General placed reliance upon the above proviso and submitted that separate notification is not required for conversion of a municipality into a Panchayat. A bare perusal of this proviso, reproduced above, shows that this contention of Shri N.L. Jain is not tenable. Shri Jain, himself after studying the matter, further frankly and fairly submitted that, "so far as this amendment is concerned, it limits its operation to inclusion or exclusion of a Panchayat area into a municipality. But it cannot dispense with the requirement to be fulfilled under the provisions of the Panchayat Act for formation of any Panchayat or inclusion of a municipality area into a Panchayat."

9. The very wordings of this amendment are so patent, clear and categorical, that they do not require any detailed consideration, with dialogue and. legal debate on this point, I have, therefore, no hesitation in holding that by invoking powers under the provisions made in Section 4 (i) including its proviso of the Municipalities Act, the State Government, cannot convert any area of a municipality into a gram Panchayat. In other words no area of a municipality functioning under the Municipalities Act can be converted into a village Panchayat either by including or any area in or from any municipality, or constituting a new village Panchayat from the existing municipality, under the provisions of the Municipalities Act, simply by issuing a notification u/s 4 of the Municipalities Act. In order to establish a new gram Panchayat of an area, which was part of the municipality or to add any area to a gram Panchayat, which was earlier an area covered by a municipality the State Government is required to follow the procedure laid down in the Rajasthan Panchayat Act.

10. It appears that in the present case the State Government has not issued any notification under the Rajasthan Panchayat Act to convert the area of existing municipality of Mandrela town into a Panchayat. It is true, as contended by "the learned Advocate-General that u/s 4 (i) of the Municipalities Act, an area can be excluded from the municipal limits, but notification dated the 1st July, 1982 which is final notification published in the Raj. Gazette of 3rd July, 1982, nowhere contemplates exclusion of any area only but it expressly and explicitly mentions that the Municipal Board Mandrela town is being converted into a gram panchayat forthwith and that is sought up be done by invoking the powers conferred under the provisions of Section 4 of the Municipalities Act. Since this was so, the process could not have been done under the Municipalities Act, although the State Government has got ample power under the provisions of the Rajasthan Panchayat Act where a different procedure is provided and the various considerations which are mentioned for, either constitution of a new panchayat or conversion to gram panchayat; are to be considered first. Unless that is done, a gram panchayat cannot be constituted by conversion of a municipal area as a whole or part into it gram panchayat.

11. It is well known that the legislature has laid down the various criteria and consideration for the declaration of particular area of a municipal board area as gram panchayat and, it has not been left to the whim sweet will or caprice or

arbitrary action of any officer or officers. An objective approach is required to be made by the State Government in such order. In order to decide, whether any particular part or whole of the municipal area should be declared or converted into a gram panchayat, the various factors, like the population, the inhabitation, the nature of the area being rural or urban and, others, would have been considered under the relevant provisions of the Rajasthan Municipalities and Panchayat Acts.

12. It is not mechanical application of these provisions but, objective, detached dispassionate, independent and impartial consideration of all these criteria and factors which should result into the decision of the State Government to declare a particular area as municipal area or gram panchayat area. It applies with all the force when an existing institution either under the Rajasthan Municipal Law or panchayat Law is sought to be converted into other institution, because at that time, it is to be seen as to whether the situation and circumstances have been so, changed and, the situations which were earlier, have disappeared or altered warranting a change. The State functionaries acting under a statute have to keep both, the letter and spirit of the law, in view, while deciding such important matters. That being so, there is no doubt that so far there has been no application of mind for converting this Municipal Board, Mandrela town, under dispute, into the gram panchayat under the Rajasthan panchayat Act.

13. The State Government is free to apply its mind and take appropriate steps, if so desired, under the provisions of the Rajasthan panchayat Act and while doing so, it will have to consider the objections, if any, which may come by the people of that area in dispute.

14. In the present writ petition, I am only considering the validity of the notification D/- the 1st July, 1982 published in the Rajasthan Gazette Extraordinary of 3rd July, 1982 converting the municipality of Mandrela town into the village panchayat under the provisions of Section 4 of the Rajasthan Municipalities Act, 1959. I have got no doubt that on a bare perusal of the provisions contained in Section 4 of the Municipalities Act and of this notification dt. the 1st July, 1982, nobody can escape without the irresistible conclusion that this notification is not within the powers of the State Government conferred upon it u/s 4 of the Rajasthan Municipalities Act, 1959.

15. Consequently, the notification dt. the 1st July, 1982 published in The Rajasthan Gazette Extraordinary of 3rd July 1982 is hereby quashed and set aside and the writ petition, with the above observations, is accepted without any order as to costs.