

B.N. Shankarappa vs Uthanur Srinivas And Ors on 21 January, 1992

Equivalent citations: 1992 AIR 836, 1992 SCR (1) 286, AIR 1992 SUPREME COURT 836, 1992 (2) SCC 61, 1992 AIR SCW 635, (1992) 1 JT 389 (SC), (1992) 1 SCR 286 (SC), 1992 (1) SCR 286, (1992) 1 RRR 316

Author: A.M. Ahmadi

Bench: A.M. Ahmadi, K. Ramaswamy, R.M. Sahai

PETITIONER:

B.N. SHANKARAPPA

Vs.

RESPONDENT:

UTHANUR SRINIVAS AND ORS.

DATE OF JUDGMENT 21/01/1992

BENCH:

AHMADI, A.M. (J)

BENCH:

AHMADI, A.M. (J)

RAMASWAMY, K.

SAHAI, R.M. (J)

CITATION:

1992 AIR 836	1992 SCR (1) 286
1992 SCC (2) 61	JT 1992 (1) 389
1992 SCALE (1) 213	

ACT:

Karnataka Zila Parishads, Taluk Panchayats Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983-Section 4(1), (2) read with Section 14 of the Karnataka General Clauses Act, 1897-Deputy Commissioner-Powers under-Whether he can exercise the power to specify the headquarter from time to time-Location of headquarter of a Mandal-Discretion of authority-Scope of-Interference by Court when discretion exercised arbitrarily.

Karnataka Zila Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 Section 4(2) read with Section 14, the Karnataka General Clauses Act, 1897-Construction-Whether powers under exhaust once a Mandal initially constituted and its headquarter specified.

HEADNOTE:

On 16.1.1986, the Deputy Commissioner issued a notification constituting a Mandal under section 4 (1) of the Karnataka Zila Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 and located the headquarter of the Mandal at Mudiyanur. Later on exercising powers under section 4 (3) of the Act he changed the headquarter to Uthanpur.

On 14.12.1987 a writ petition (W.P.No. 7685/86) was filed challenging the decision of the Deputy Commissioner.

The High Court dismissed the petition holding that on passing a resolution my Mandal to change the headquarter from the existing place to another place, the Deputy Commissioner was to consider if he would like to exercise power under section 4(2) of the Act.

The Mandal passed a fresh resolution and thereupon the Deputy Commissioner issued a notification under section 4 (2) of the Act for change of headquarter and on 20.1.1988 the draft notification was published in the Gazette.

The respondents 1 to 10 filed a writ petition (W.P. No 1888/88)

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before the High Court challenging the draft notification. The writ petition was dismissed.

Considering the resolution and the objections to the notification, the Deputy Commissioner issued another notification under section 4 (2) of the Act and the headquarter of the Mandal was changed from Uthanpur to Mudiyanur.

The respondents challenged the notification by filing a revision application under section 4 (3) of the Act which was dismissed by the Divisional Commissioner.

The respondents moved the High Court in W.P. No. 77 of 1989 challenging the order of the Deputy Commissioner.

The Single Judge of the High Court dismissed the petition, against which an appeal was filed before the Division Bench of the High Court.

The Division Bench allowed the appeal following an earlier decision of the High Court in Writ Application No. 2564 of 1987 dated 28.5.1991.

The correctness of the decision of the Division Bench of the High Court was challenged in this appeal by special leave.

The appellant contended that once the power to specify the headquarter was conferred on the Deputy Commissioner by Section 4 (1) of the Act, it could be exercised from time to time by virtue of section 14 of the Karnataka General Clauses Act, 1897; that the scheme of section 4 of the Act should be construed with the aid of section 14 of the General Clauses Act in such a manner as not to leave a vacuum for the exercise of power for a change of

headquarter; that if the High Court's view was approved, there could be no power vested in any authority whatsoever for changing or specifying the headquarter of the reconstituted Mandal which vacuum might lead to avoidable complications; and that once the legislature invested the Deputy Commissioner with the power to specify the headquarter under section 4 (1), subject to the modification by the Commissioner under section 4 (3), the power to alter the headquarter of the Mandal from time to time, if the occasion so required, must be read into it.

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The respondents submitted that while sub-section (2) of Section 4 of the Act in terms empowered the Deputy Commissioner to alter the headquarter of the Mandal because the headquarter once specified under section 4(1) should remain unaltered; that the act designedly did not confer any power on any authority whatsoever to change the headquarter once specified under section 4 (1).

Allowing the appeal, this Court,

HELD : 1.01 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. [293 B]

1.02 The power conferred by sub-section (2) of Section 4 of the Karnataka Zila Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 can be exercised where there is a change in the areas 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. [293 D-E]

1.0 The scheme of sub-section (2) of Section 4 would 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. [293 E]

1.04 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. [294 C]

1.05 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. [293 B-C]

1.06 The power to specify the headquarter conferred on the Deputy Commissioner can be exercised from time to time as occasion

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requires by virtue of section 14 of the General Clauses Act. [293 C-D]

1.07 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 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 malafide 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. [293 H; 294 A-B]

2. 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 the provision of the Act be read 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. [293 F-H]

J.R. Raghupaty & Ors. v. State of A.P. & Ors., [1988] 4 SCC 364, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 378 of 1992.

From the Judgment dated 31.7.1991 of the Karnataka High Court in Writ Appeal No. 1224 of 1990.

Santosh N. Hegde and P.Mahale for the Appellants. A.K. Subbiah, Ranji Thomas, K.V. Mohan, M Veerappa and K.H. Nobin Singh for the Respondents.

The Judgment of the Court was delivered by AHMADI, J. Special leave granted.

This appeal is directed against the judgment of the High Court of Karnataka dated 31 st July, 1991, whereby the Division Bench allowed the Writ Appeal setting aside the decision of the learned Single

Judge and held, relying on the judgment in Writ Appeal No. 2564 of 1987 decided on 28th May, 1991, that Section 4 (2) of the Karnataka Zila Parishads, Taluk, Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (hereinafter referred to as 'the Act') does not confer any power in the Deputy Commissioner to change the headquarter of any Mandal. It is this view taken by the Division Bench of the High Court that is put in issue in the present appeal. For the purpose of disposal of this appeal we may notice a few relevant facts.

The Act came into force w.e.f. 14'th August, 1984. Thereafter, on 16th January, 1986 a notification was issued by the Deputy Commissioner in exercise of power conferred by Section 4 (1) of the Act constituting a Mandal, named Mudiyanur Mandal, and located its headquarter at Mudiyanur. However, the Divisional Commissioner changed the headquarter to Uthanpur while exercising power under Section 4 (3) of the Act. Thereupon a writ petition was filed on 14th December, 1987, being Writ Petition No. 7685/86, challenging the said decision of the Divisional Commissioner. That Writ petition was dismissed by the High Court observing: if the Mandal so desires it may pass a resolution to change the headquarter from the existing place to another place whereupon it will be open to the Deputy Commissioner to consider if he would like to exercise power under Section 4 (2) of the Act. Pursuant thereto a fresh resolution was passed whereupon the Deputy Commissioner issued a notification under Section 4 (2) of the Act for change of headquarter which was published in the Government Gazette of 20th January, 1988. On the issuance of the said draft notification respondents Nos. 1 to 10 filed a writ petition, being Writ Petition No. 1888/88, challenging the said draft notification. That writ petition was also dismissed by the High Court. The Deputy Commissioner after considering the resolution of the Mandal and the objections received in response to the draft notification from respondents Nos 1 to 10 passed an order declaring Mudiyanur as the headquarter of the Mandal. To give effect to his decision, a notification under Section 4 (2) of the Act was issued on 23rd July, 1988 whereby the headquarter was changed from Uthanpur to Mudiyanur. Once again the respondent Nos 1 to 10 challenged that notification by a revision application filed under Section 4 (3) of the Act. The Divisional Commissioner exercising power under the said provision dismissed the revision application whereupon a Writ Petition no 77 of 1989 was taken to the High Court. A learned Single Judge of the High Court dismissed the writ petition. An appeal was carried to the Division Bench of the High Court. the Division Bench allowed the appeal by the impugned judgment dated 31 st July, 1991 following an earlier decision in Writ Appeal No. 2564 of 1987 rendered on 28th May, 1991. It is the correctness of this decision which we are called upon to examine.

Section 4 (1) as it stood before its amendment on 4th October, 1985 empowered the Deputy Commissioner to declare any area comprising a village or group of village having the required population to be a Mandal for the purposes of the Act. That sub-section did not carry a provision empowering the Deputy Commissioner to specify the headquarter of the Mandal. By the amendment brought about in that provision by Act 3 of 1986 w.e.f. 4th October, 1985, this power was specifically conferred on the Deputy Commissioner. The amended Section 4 (1) reads as under :

"(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 village having a population of not less than eight thousand and not

more than twelve thousand to be a Mandal, may, after previous publication, declare such area as a Mandal for the purposes of this Act and also specify its headquarter."

On a plain reading of this provision, it becomes obvious that the Deputy Commissioner was empowered not only to declare a village or group of villages as a Mandal but also to specify its headquarter. We then come to sub-section (2) which empowers the Deputy Commissioner, at the request of the Mandal concerned, or otherwise, to increase or decrease the area of any Mandal, by including within or excluding from such Mandal any village or group of villages or alter the name of any Mandal or declare that any area shall cease to be a Mandal after previous publication of the proposal by a notification in the Gazette. This sub-section confers power on the Deputy Commissioner to increase or diminish the area of any Mandal and to alter the name of any such Mandal but it does not in so many words confer power to specify the headquarter of such reconstituted Mandal. Sub-section (3) of section 4 empowers the Commissioner either on an application made within thirty days from the date of the notification by an aggrieved party or in exercise of suo moto power after giving a reasonable opportunity of being heard to the applicant or the Mandals concerned, revise the orders of the Deputy Commissioner passed under sub-section (1) or sub-section (2), as the case may be, and may also, if he considers necessary, modify it as provided in the third proviso to subsection (1) Every order so passed revising or modifying the order of the Deputy Commissioner shall be published in the Official Gazette. We are not concerned with the third proviso to sub-section 4.

Sub-section (1) of Section 4, therefore, empowers the Deputy Commissioner to declare any village or group of villages as a Mandal and to specify its headquarter. After the constitution of the Mandal and on the headquarter being specified under this sub-section, if any change, is to be effected in the area of the Mandal either by increasing or reducing its size, the power has to be exercised under sub-section (2) of Section 4 of the Act. That sub-section also empowers the Deputy Commissioner to alter the name of the Mandal. It was submitted by the counsels for the respondents that while this sub-section in terms empowers the Deputy Commissioner to alter the name of the Mandal, it does not empower him to alter the headquarter of the Mandal because the headquarter once specified under sub-section (1) of Section 4 must remain unaltered since the Act designedly does not confer any power on any authority whatsoever to change the headquarter once specified under sub-section (1) of Section 4. This submission was countered by the learned counsel for the appellant by inviting our attention to Section 14 of the Karnataka General Clauses Act, 1897 (hereinafter called 'the General Clauses Act'. that provision reads as under:

"Where by any Mysore or Karnataka Act made after the commencement of this Act, any power is conferred then that power may be exercised from time to time as occasion requires."

Counsel for the appellant submitted that once the power to specify the headquarter is conferred on the Deputy Commissioner by sub-section (1) of Section 4 of the Act it can be exercised from time to time by virtue of the said Section 14 if the occasion so requires. He, therefore submitted that this Court should construe the scheme of Section 4 of the Act with the aid of Section 14 in such a manner as not to leave a vacuum for the exercise of power if need arises for a change of headquarter. He

submitted that if, the view taken by the High Court is approved, a situation may arise when even after a change takes place in the size of the Mandal area there would be no power vested in any authority whatsoever for changing or specifying the headquarter of the reconstituted Mandal which vacuum may lead to avoidable complications. He, therefore, submitted that once the legislature has invested the Deputy Commissioner with the power to specify the headquarter under sub-section (1) of Section 4, subject to the modification which the Commissioner may choose to make under sub-section (3) of Section 4, the power to alter the headquarter of a Mandal from time to time if the occasion so requires must be read into it. We think there is a considerable force in this submission.

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 28 th 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 subsection (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 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 malafide 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.

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.

V.P.R.

Appeal allowed.