

Channigappa and Another Vs. State of Karnataka and Others

Channigappa and Another Vs. State of Karnataka and Others

SooperKanoon Citation : sooperkanoon.com/383984

Court : Karnataka

Decided On : Jul-14-2000

Reported in : ILR2000KAR2941; 2000(6)KarLJ163

Judge : Ashok Bhan Actg. CJ. and;R. Gururajan, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sections 121, 122, 123, 124, 160, 161, 162, 163 and 311; Karnataka Panchayat Raj (Amended) Act, 2000 - Sections 7; [Constitution of India](#) - Articles 243-D, 243-K, 226, 324, 326, 327, 328 and 329; Karnataka Panchayat Raj (Reservation of Seats in Taluk Panchayats and Zilla Panchayats by Rotation) Rules,1998 - Rule 3

Appeal No. : Writ Petition No. 16163 of 2000

Appellant : Channigappa and Another

Respondent : State of Karnataka and Others

Advocate for Def. : Sri A.N. Jayaram, Adv. General, ;Sri Suresh Pai, Additional Government Adv., ;Sri G.K. Bhat, High Court Government Pleader and ;Sri S.K. Venkata Reddy, Adv.

Advocate for Pet/Ap. : Sri R.N. Narasimhamurthy, ;Senior Adv. for Sri D.L. Jagadish and ;Sri A.S. Mahesh, Adv.

Judgement :

ORDER

R. Gururajan, J.

1. This petition is filed by way of public interest challenging the constitutional validity of Section 124(c) and Section 163 of the [Karnataka Panchayat Raj Act, 1993](#) as amended by Act 8 of 2000 and for a mandamus to State Election Commission not to accept the lists sent by the Government and Deputy Commissioners of the State or notifications issued by the Government and Deputy Commissioners of the State identifying the reservation of Constituencies to Scheduled Castes, Scheduled Tribes, Backward Classes and for Women to Taluka Panchayats and to Zilla Panchayats in the State of Karnataka and not to hold elections to Taluka Panchayats and to Zilla Panchayats as per notifications issued by the Government and the Deputy Commissioners of the State dated 22-4-2000, 20-4-2000, 17-4-2000, 24-4-2000, 26-4-2000 and 28-4-2000 as per Annexures-B, C, E and F. Petitioners have also sought for a direction to constitute a Commission or Committee consisting of retired Judges of High Court and Director of Backward Classes and Minorities, Director of Scheduled Castes, Scheduled Tribes and the local MLAs of the District to assist the State Government in the matter.

2. A detailed affidavit is also filed in support of the same. It is stated in the petition that the first petitioner is an elected Member of the Karnataka Legislative Assembly from Koratagere Constituency, Tumkur District. Petitioner 2 is an Ex-President of the Hassan Zilla Panchayat. They say that they are concerned with the democratic method of elections in the matter of Panchayats both Taluka and Zilla. They are concerned about the exercise of State power while taking steps regarding delimitation and reservation of Constituencies. They are concerned about free and fair elections to these basic institutions. According to them the State Election Commission is an independent Commission entrusted with constitutional authority and power and that authority cannot be denied any power in the matter of conduct of elections to Taluka and Zilla Panchayats. It is their case that the Amendment Act 8 of 2000 is unconstitutional, invalid and illegal due to the reason that the power vested with the Election Commission is taken away by the Government contrary to Article 243. By virtue of the amendment the power now has been entrusted to the Deputy Commissioner/Government which cannot be

done in terms of the constitutional mandate according to the petitioners.

3. Petitioners further complain denial of an opportunity to the voters of the Constituency to make representations to the Deputy Commissioner/Government while issuing the impugned notification changing the territory under the Act.

4. Petitioners further say that the State Government issued a notification identifying reservation of Constituency or Constituencies to Scheduled Castes, Scheduled Tribes, Backward Classes and women and the said notifications are not in conformity or in accordance with the Karnataka Panchayat Raj (Reservation of Seats in Taluk Panchayats and Zilla Panchayats by Rotation) Rules, 1998 (for short 'rotation rules') and the said reservation of constituencies to Scheduled Castes, Scheduled Tribes, Backward Castes and Women that are now made are in contravention of the Article 243 of the [Constitution of India](#).

5. Petitioners further say that while constituting the Constituencies to Zilla Parishath the Government issued a notification without providing General Constituency to (1) Sakleshpur and (2) Alur Taluk. This is contrary to rules. The Government was influenced by the Chief Minister while constituting a Constituency to Mandya Zilla Panchayat to provide all the five Constituencies of Maddur Taluk as General Constituencies without any reservation to the Scheduled Castes, Scheduled Tribes and for Backward Classes. It has been done at the instance of the Chief Minister without application of mind. The notification for Mandya Zilla Panchayat has been issued in violation of the rotation rules and also in violation of Article 243 of the [Constitution of India](#).

6. Petitioners say that while determining the Constituencies for conducting elections to the Taluka Panchayat and Zilla Panchayat, notifications were issued which determined the constituency. The reservation of the seats for Taluka Panchayat and Zilla Panchayat are done at the instance of the Ministers in charge of the District and also at the instance of local MLAs, thereby both the Government and Deputy Commissioners are compelled to modify the Constituency to suit their needs.

7. This Court issued rule and granted an interim order ordering the respondents not to issue calender of events proposing to hold elections to Zilla Panchayat and Taluka Panchayat until further orders. The matter was ordered to be called on 9-5-2000. On 9-5-2000 the matter was posted and objections were filed by the State both on merits and on interim application. The Division Bench on 10-5-2000 in a detailed order allowed IA-I thereby vacating the interim order. The Division Bench directed the matter to be listed for final disposal on reopening day viz., on 22-5-2000. Thereafter the matter was posted for final disposal.

8. The State Government has filed counter in support of its contention. The State in the counter say that the writ petition is not maintainable in view of a bar under Article 243D and Article 329 of the [Constitution of India](#). They further say that the amendment was gazetted on 3-4-2000 and the writ petition was filed on 10-5-2000 deliberately to embarrass the Government at the time of holding of election. Their further contention is that the writ petition cannot be termed as public interest litigation since the petitioners cannot be said to, be aggrieved by this legislation. They also contend that the amendment Act is constitutionally valid. The amendment only has resulted in restoration of the position which prevailed before certain changes were inserted in the principal Act by the Amendment Act 29 of 1997. They also say that no details are furnished with regard to invalidity in the petition. It is also their case that under the constitutional scheme, it is not necessary that power to reserve the constituencies for different categories should vest in the Election Commission only. With regard to the complaint about violation of rules of natural justice it is their contention that no such hearing need be given on the facts of the case. In conclusion they justify their stand by annexing various documents in the matter.

9. Heard Mr. R.N. Narasimhamurthy, learned Senior Counsel appearing for petitioners and Sri A.N. Jayaram, learned Advocate General for the State. The Election Commission is represented by its learned Counsel Sri S.K. Venkata Reddy.

10. Learned Senior Counsel for the petitioner raised several contentions in the light of the pleadings. Firstly his contention is that the present amendment runs

counter to the constitutional Scheme of the Panchayat Raj system in the light of Chapters IX and XV of the [Constitution of India](#). He contended that Article 243D provide for reservation for Scheduled Castes and Scheduled Tribes and for women. In Article 243K according to him a categorical constitutional mandate of exercising the powers of the Election Commission is provided for superintendence, direction, control and preparation for electoral roll for and theconduct of, all elections to the Panchayat. He also referred to Articles 324, 327 and 328 to contend that the Election Commission had been vested with the powers in the matter of election to the Parliament/Legislative Assemblies. He emphasised the words control of the preparation of electoral roll for and conduct of all elections to contend that delimitation of the constituency or the change of the constituency from one group to another cannot be done except by the Election Commission in terms of the constitutional mandate in terms of the Article 243K. In his submission the amendment is to be declared as unconstitutional as being violation of Article 243D, and it is also arbitrary in character.

11. The next submission of the petitioner's Counsel is that the said entrustment of the work to the Deputy Commissioner is with oblique motive in the matter of elections.

12. It is further contended that there are no sufficient guidelines and it amounts to excessive delegation of essential legislative functions. He argued that if such powers are entrusted to the Deputy Commissioner there are chances of Deputy Commissioners being pressurised and being directed to determine territorial constituency and to change constituencies at their whims and fancies and as per the direction of ruling politicians.

13. It is further contended that there was no opportunity to the voters before issuing the impugned notifications in the matter of reservation of constituencies. Any such adjustment or change after publication of the constituency according to the Counsel results in evil consequences and therefore an opportunity to have a say ought to have been granted before changing the constituencies in terms of the impugned notification.

14. The next argument of the learned Counsel is that the rules of 1998 provided for the powers being exercised by the Deputy Commissioner. The rules were amended retrospectively by the Government. The draft rules were published on 19-4-2000 providing for 7 days for filing objections but the final notification was issued on 26-4-2000 thereby providing for retrospective effect of the rules. According to him the notification was issued on prior to 26-4-2000 and those notifications were issued under the unamended rules.

15. Per contra the learned Advocate General contended that the present amendment to the Act cannot be considered to be in violation of the Article 243K. The harmonious reading of Article 243-K(1) and (4) would show that the State Legislature can make a law in respect of all matters relating to or in connection with election to the Panchayat. Delimitation, change or adjustment of constituencies precedes the elections and it cannot be said that it is in connection with the elections. His contention is that Legislature in its wisdom has provided a power to the Deputy Commissioner and that cannot be questioned by the petitioner in this petition.

16. The learned Advocate General also countered the argument of the petitioner by contending that there is no material placed on record to contend that there is any oblique motive as alleged by the petitioner. Guidelines have been provided in the matter. He explained to us as to how these adjustments are made and factually there is no action taken by them that has caused detriment to the interest of the electorate. It is only an adjustment/rotation in terms of the rules. He strongly disputed the contentions of mala fide, oblique motive etc., made in the petition. His further contention is that in these matters there is no any need for any further hearing and the action of the Government is fully protected by the statutory laws governing the case on hand.

17. In the light of these rival contentions the following questions emerge for our consideration:

1. Whether the petitioners can maintain public interest litigation before us on the facts of this case?

2. Whether the present amendment i.e., Act 8 of 2000 is in violation of Article 243D of the [Constitution of India](#)?
 3. Whether the reservation now made in terms of the impugned notification is in violation of the rotation rules of 1998 and is in violation of Article 243D of the [Constitution of India](#)?
 4. Whether the action of the respondent is not a bona fide action?
 5. Whether rules of natural justice is applicable when the Government in exercise of its statutory power alters the reservation by way of rotation in the case on hand?
18. Re: Contention No. 1: At the outset learned Advocate General questioned the locus standi of the petitioner to maintain this petition. His argument is that the present petition cannot be said to be in the interest of public. We do not accept this argument. The petitioner a responsible member of the State Legislature, who has chosen to espouse the cause of general public when the State Government has chosen to take away the powers from a constitutional Authority and place the same in the hands of Deputy Commissioner and the Government. Several questions of vital importance including the constitutional validity of the section has been challenged in this petition. Taking into consideration the overall pleadings placed before us we are unable to accept the argument of the learned Advocate General that the present petition cannot be treated as public interest litigation. It cannot be said that the petitioner has filed this petition for his personal interest. He has only espoused the cause of public by challenging the decision of the Government, therefore we hold that this petition is maintainable.
19. Re: Contention No. 2: The Karnataka Panchayat Raj Act of 1993 is an Act providing for an establishment of Panchayat Raj system keeping with the constitutional mandate relating to Panchayat for greater participation of the people and for more effective implementation of rural development programmes. The Act provides for Grama Panchayat, Taluka Panchayat and Zilla Panchayat, three tier system. Sections 123 and 124 of the Act provide for delimitation of territorial constituencies and also provide for delimitation subject to the general or special order of the State Election Commission by Deputy Commissioner. Section

163 provides for a delimitation of territorial constituency, subject to general or special orders of the State Election Commissioner the State Government has amended these provisions by Act 8 of 2000. Section 7 of the amended Act provides for the substitution of the word 'Government' for the word 'State Election Commission' in Sections 121, 122 and 123 of the principal Act. Section 124 was amended providing for the substitution of the word 'Deputy Commissioner' for the word 'subject to the general or special order of the State Election Commission' or the Deputy Commissioner. Similarly for the words 'State Election Commission' the word 'Government' was substituted in Sections 160, 161 and 162. Consequently the amendment was brought to Section 163 providing for the word 'Government' instead of 'subject to the general or special order of the State Election Commission or Deputy Commissioner'.

20. In substance the power vested with the State Election Commission has been taken away and is given to the Deputy Commissioner and the Government. The principal contention of the petitioner as effectively argued by the learned Senior Counsel is that these amended provisions run counter to Article 243K of the Constitution. Article 243K read as under:

'243(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may

be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with elections to the Panchayats'.

21. Learned Counsel for the petitioner referred to these two Articles to contend that when the Constitution has provided for the sacred duty being exercised by the Election Commission, the State Legislature cannot make a law in violation of this Article. His argument is that delimitation or alteration in the constituency can be done only by Election Commission and not by any authority and any power granted to any authority is constitutionally impermissible in our Constitution. He relied on the judgment of the Supreme Court in the case of *Mohinder Singh Gill and Another v Chief Election Commissioner, New Delhi and Others*, in support of his submission.

22. The learned Advocate General strongly relies on Article 243-K(4) to contend that the State Legislature could make provisions with respect to all matters relating to or in connection with the election to the Panchayat. The delimitation or reservation is also a matter that can be considered by the State Legislature.

23. Learned Senior Counsel for the petitioner very fairly submitted before us that he is not questioning the competence of the State Legislature in the matter of law of elections.

24. We have carefully considered submissions of Counsels on either side on the said issue. The relevant Articles require to be noted by us are Article 243D reservation of seats, Article 243-K(1) and (4) and Articles 326, 327 and 328. As fairly submitted by the learned Counsel for the petitioner power of legislature cannot be questioned in the light of Article 243-K(4) of the Constitution. The only point that requires our consideration is as to whether the said law made by the legislature in terms of the amendment runs counter to Article 243K of the Constitution. Learned Counsel's argument is that the delimitation/adjustment also amounts to preparation of electoral rolls for and the conduct of all elections to the

Panchayat. Similar provisions are found under Articles 326 to 328 of the Constitution. Article 243-K(4) provides for law being made with respect to all matters relating to or in connection with the election to the Panchayat. In our view law relating to delimitation/adjustment to a constituency also can be made by the Legislature since it is a matter relating to or in connection with the election to the Panchayat.

25. After careful consideration we are of the view that argument of learned Counsel for the petitioner cannot be accepted in the light of the Article 243-K(4).

In the case of *Mohinder Singh Gill*, *supra*, the Supreme Court noticed that:

'In a democratic set-up power has to be exercised in accordance with law. Since the conduct of all elections is vested under Article 324(1) in the Election Commission, the framers of the Constitution took care to leaving scope for exercise of residuary power by the Election Commission, in the infinite variety of situations that may emerge from time to time. Yet every contingency could not be foreseen and provided for with precision. The Commission may be required to cope with some situation, which may not be provided for in the enacted laws and rules. The Election Commission, which is a high-powered and independent body, cannot exercise its function or perform its duties unless it has amplitude of powers. Where a law is absent, the Commission is not to look to any external authority for the grant of powers to deal with the situation but must exercise its power independently and that the election process is completed in a free and fair manner. Moreover, the power has to be exercised with promptitude'.

26. In the case of *Mohinder Singh Gill*, *supra*, the Supreme Court after noticing the power of the Election Commission has to say the following in the matter of Article 324. The learned Judges again rule as under:

'Article 324, which we have set out earlier, is a plenary provision vesting the whole responsibility for national and State elections and, therefore, the necessary powers to discharge that function. It is true that Article 324 has to be read in the light of the constitutional scheme and the 1950 Act and the 1951 Act. Sri Rao is right to the extent he insists that if competent legislation is enacted as visualized in Article 327

the Commission cannot make himself free from the enacted prescriptions..... And the supremacy of valid law over the Commission argues itself no one is an imperium in imperio in our constitutional order. It is reasonable to hold that the Commissioner cannot defy the law armed by Article 324. Likewise, his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system... .Article 324, in our view operates in areas left unoccupied legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections' are the broadest terms'.

27. This judgment has been subsequently noticed by a Constitution Bench in the case of A.C. Jose v Sivan Pillai and Others. In the said case the Supreme Court after noticing the scope of Article 324 has laid down the law in the following words;

'The observations extracted above, furnish a complete answer to the arguments of Mr. Jethmalani and Mr. Asoke Sen as it has been clearly held that Article 324 would operate only in areas left unoccupied by legislation, even if the widest possible connotation is given to the language of Article 324. While summarising the propositions, the Court made the following observations. 'Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when the Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission shall act in conformity with, not in violation of such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice insofar as conformance to such canons can reasonably and realistically be required of it as fair play in action in a most important area of the constitutional order, viz., elections'.'

28. The Supreme Court summarises in paragraphs 24 and 25 in the following manner:

'It is pertinent to indicate that the High Court fell into an obvious fallacy by acceptance of the position that the direction of the Commission was intended to operate in an uncovered field. When the Act and the rules prescribed a particular

method of voting, the Commission could not innovate a new method and contend that use of the mechanical process was not covered by the existing law and, therefore, did not come in conflict with the law in the field'.

'To sum up, therefore, the legal and constitutional position is as follows:

(a) when there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections;

(b) where there is an Act and express rules made thereunder, it is not open to the Commission to override the Act or the rules and pass orders in direct disobedience to the mandate contained in the Act or the rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and rules) in the matter of superintendence, direction and control as provided by Article 324;

(c) where the Act or the rules are silent, the Commission has no doubt plenary powers under Article 324 to give any direction in respect of the conduct of election; and

(d) where a particular direction by the Commission is submitted to the Government for approval, as required by the rules, it is not open to the Commission to go ahead with implementation of it at its own sweet will even if the approval of the Government is not given'.

29. The Supreme Court again in the case of Kanhiya Lal Omar v R.K. Trivedi and Others, has noticed in Mohinder Singh Gill's case, supra, and thereafter rules in para 16 as under:

'Even if for any reason, it is held that any of the provisions contained in the Symbols Order are not traceable to the Act or the rules, the power of the Commission under Article 324(1) of the Constitution which is plenary in character can encompass all such provisions. Article 324 of the Constitution operates in areas left unoccupied by legislation and the words 'superintendence', 'direction' and 'control' as well as 'conduct of elections' are the broadest terms which would

include the power to make all such provisions. See Mohinder Singh Gill's case, *supra*, and AC. Jose's case, *supra*'.

30. In the light of these judgments we are unable to accept the argument of learned Counsel for the petitioner that the power under no circumstances can be granted to any other authority other than Election Commission. His argument is right if the said area is not occupied as held by the Supreme Court. Since the field is occupied by the Panchayat Raj Act and hence we hold that the amendment particularly providing for substitution of the Election Commission to the Deputy Commissioner and the Government is constitutionally valid and is not opposed to Article 243K as contended by learned for the petitioner. This argument we reject in the light of the clear pronouncement of law by the Supreme Court in identical circumstances.

31. The next argument of Counsel, is that the words conduct, preparation of electoral rolls and conduct of elections to Panchayat would include delimitation and adjustment of the Constituency. These acts according to him can be done only by an Election Commission. We have already held that the amended Act is constitutionally permissible law. As rightly pointed out by the learned Advocate General the delimitation and adjustment of constituencies is an act of precedence in the matter of conduct of elections, and it cannot be said to be a part of electoral process as argued by learned Counsel for the petitioner. The words in Article 243-K(1) is clear to show that the delimitation or the adjustment is an act preceding to the preparation of the electoral rolls and conduct of elections and therefore it cannot be held that in terms of the amended Act Deputy Commissioner/Government cannot also work delimitation or adjustment as contended by the petitioner's Counsel'. We reject this contention raised by the petitioner.

32. Re: Contention No. 3: The Panchayat Raj Act provides for framing of rules. Exercising the said power under the Act, rules have been framed known as Karnataka Panchayat Raj (Reservation of Seats in Taluk Panchayats and Zilla Panchayats by Rotation) Rules, 1998. Rule 3 of the Rules provide for seats being reserved in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and

Women in terms of the Act. The allotment by rotation in terms of the rule is vested with the State Election Commission. The argument of learned Senior Counsel is that the rules are bad in view of Article 243-K(1) of the Constitution. The argument advanced in support of the constitutional validity of the amended Act is pressed into service even with regard to validity of the rules. We have already held that the said amendment Act is constitutionally valid, and the same reasoning holds good insofar as the constitutional validity of this rule is concerned. We reiterate that in view of the subject being an occupied one it cannot be said that it is violative of Article 243 in the light of clear pronouncement of law by Supreme Court.

33. The learned Counsel for the petitioner complains about the retrospective character of the rule in the case on hand. He argued that the draft rules calling for objection was issued on 19-4-2000 providing for seven days time for objection. The final notification was issued on 26-4-2000 and final notification provided for retrospective operation of the amended rule from 3-4-2000. The argument of the learned Counsel cannot be accepted for two reasons. Firstly amendment of the rules are in conformity with the amended Act thereby providing for the power to the Deputy Commissioner and the State Government instead of State Election Commission. Retrospective amendment of laws is a well-known process of legislation. Retrospective laws also have been upheld by Courts of law. In fact Section 311(2) of the Act provides for a rule under this Act being made with retrospective effect. Therefore this contention is not available to the petitioner. The second limb of the argument is that the rule made under this Act shall have the effect as if enacted in this Act. According to the petitioner's Counsel the notification was issued prior to this amendment and it is therefore contrary to that section in the light of Section 311 of the Act, A careful reading of Section 311(2) would show that every rule made under this Act with retrospective effect shall have the effect as if enacted in this Act. It would mean that a retrospective rule if so made has the approval of the statute. Moreover he fairly admitted that the petitioner is not questioning the legislative competence in the matter of retrospective character of the rule making process. In the circumstances we have to reject this contention as well. The rules were amended in conformity with the Act providing for the powers to the Deputy Commissioner and the State instead of State Election Commission retrospectively which in our opinion is permissible under the Act.

34. Re: Contention No. 4: The next contention urged before us is that the impugned action on the part of the respondents is not bona fide. The question of any act being not bona fide or mala fide has to be gathered from the material facts placed before a Court of law. In paras 11 and 17 petitioner has contended that the present adjustment is not bona fide. In para 11 petitioner states that the Administrative District Ministers will instruct the Deputy Commissioner to determine the territorial constituency or constituencies in which seats are to be reserved for the persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and Women. This has been denied by State Government while answering in para 11 in their statement. Such general vague allegations of this nature cannot be accepted without any details in the petition. The petitioner admittedly is a sitting member of the Legislature and it is within his knowledge as to which Minister is in charge of which District and the petitioner has not chosen to give details regarding his allegation of a Minister influencing the Deputy Commissioner by way of instructions. The allegations made by the petitioner to say the least lacks material particulars and bereft of details in the petition. We are not able to examine the allegations in the absence of details. However, the petitioner has given some details with regard to Sakleshpur and Alur Taluks. The petitioner has also made a sweeping statement that in constituting a constituency to Mandya Zilla Panchayat the Government was influenced by the Chief Minister to provide all the five constituencies of Maddur Taluk as General Constituencies without any reservation to the Scheduled Castes, Scheduled Tribes and Backward Classes and also in respect of Maddur Legislative Assembly. It is also mentioned that the adjustment for delimitation has been made at the instance of the Chief Minister. This has been countered by the State in para 17 of the objection statement. They have annexed R-1 and R-2 in justification of their stand. When the petitioner being a member of the Legislature has chosen to make allegation against the Chief Minister we are unable to understand as to why he has not chosen to array the Chief Minister as a party to the proceedings. When serious allegations of this type are made against a responsible Chief Minister of a State, it is expected of a sitting M.L.A. to make him a party-respondent. The same has not been done in the present case. On that ground itself the contention of mala fide on the part of the Chief Minister requires to be rejected. Even otherwise the learned

Advocate General at the time of his argument has placed before us the details in this regard. A circular instruction has been issued by the Secretary with regard to allotment. The said circular provides for various guidelines in the matter of adjustment. The petitioner has not placed any factual details to counter this in this regard. Moreover when the Panchayat election takes place to entire State the entire notification pertaining to other changes cannot be struck down on one incident particularly in the absence of facts available in petition. Moreover there cannot be mala fide in the matter of legislation. In conclusion we have to reject this plea for want of details and for want of proper pleadings by the petitioner.

35. Re: Contention No. 5: The last argument of learned Counsel for the petitioner is that assuming without admitting that the Acts and Rules are constitutionally valid, even then according to him the State Government after issuing a notification in the matter of delimitation and adjustment have failed in their duty an opportunity to the affected parties. His complaint is that the well-accepted principle of audi alteram partem is violated by the respondents. In reply to this learned Advocate General would say that the rules does not provide for any such opportunity.

36. The learned Counsel for the petitioner relies on a judgment of the Supreme court in State of Uttar Pradesh and Others v Pradhan Sangh Kshetra Samithi and Others, and the judgment of the Punjab and Haryana High Court in Kalsana Credit and Services Co-operative Societies Limited, Kalsana v Bikram Singh and Another, in support of his submission. Learned Counsel for the petitioner strongly placed reliance to paragraphs 13 to 15 in the judgment of State of Uttar Pradesh's case, supra. Admittedly the Government has issued notifications dated 20-4-2000 to 28-4-2000 and the same has been subsequently altered in the light of the amended rules. It is a well-settled proposition of law that an opportunity has to be provided whenever civil consequences occur. In the case on hand the Government in exercise of its statutory rotation power has readjusted certain various constituencies providing for readjustment/rotation of the constituencies after amendment of rules without calling for objections from the general public. The Supreme Court in the famous judgment of State of Uttar Pradesh's case, supra, noticed this very submission and ruled as under:

'. . . . the State Government should bear it in mind that if and when the next regrouping of the villages and the redetermination of the Panchayat areas is undertaken, the authorities will have to give sufficient opportunity to the people of the areas concerned for raising the objections. This is with a view to remove their grievances, if any, with regard to the difficulties, inconveniences and hardships, likely neglect of their interests, domination of certain sections and forces, remoteness Of the seat of administration, want of proper transport and communication facilities etc. The opportunity wilt also provide an occasion for the people to come forward with suggestions for better and more viable, compact and cohesive regrouping of the villages for efficient administration and economic development. The objections are not to be invited to enable the people to exercise the sort of a right of self-determination which is sought to be spelt out by the High Court. The final decision with regard to the delimitation of the Panchayat areas, after hearing the objections and suggestions will, of course, be that of the State Government acting through the Director..'

(emphasis supplied)

37. In the light of the pronouncement of the Supreme Court we are of the view that natural justice has to be observed as and when the regrouping is changed/done by the State Government through the Deputy Commissioner. In this connection we have to note the observation of the Supreme Court in the very judgment in para 13:

'. . . . There was, therefore, no invalidity in the action taken by the State Government by its notification of 31st August, 1994 to commence the election process. We are, in these proceedings, referring to the lacuna in the steps taken by the State Government to finalise the Panchayat areas only with a view to point out that it was obligatory on the State Government to hear the objections before the Panchayat areas were finalised. The ratio of the decisions of this Court in Vishakhapatnam Municipality v Kandregula Nukaraju and Others, S.L. Kapoor v Jagmohan and Others, Bal-dev Singh and Others v State of Himachal Pradesh and Others, Sundarjas Kanyalal Bhatija and Others v Collector, Thane, Maharashtra and Others and Atlas Cycle Industries Limited v State of Haryana,

requires that a reasonable opportunity for raising the objections and hearing them ought to be given in such matters since the change in the areas of the local bodies results in civil consequences. It was not disputed before us that the action of bringing more villages than one under one Gram Panchayat when they were earlier under separate Gram Panchayats, does involve civil consequences. However, as held in Vishakhapatnam Municipality, S.L. Kapoor, Baldev Singh, Sundarjas Kanyalal Bhatija and Atlas Cycle's cases, in matters which are urgent even a post-decisional hearing is a sufficient compliance of the principle of natural justice, viz., audi alteram partem. It is in view of this position in law that the State Government had offered to hear the grievances of the writ petitioners before the High Court and before us'.

38. In the light of this pronouncement of law we have no hesitation in holding that an opportunity and suggestion is a welcome measure in the best interest of Panchayat Raj system. The argument of 'no opportunity' of the learned Advocate General cannot be accepted. But the question remains as to whether elections in terms of the changed impugned notifications are to be struck down on this ground alone. The Supreme Court in the well-known judgment of State of Uttar Pradesh, supra, has given cogent reasons as to why an opportunity has to be given to the people of the areas concerned for raising objections. The Supreme Court has mentioned a few circumstances such as difficulties, inconveniences, and hardships, likely neglect of their interests, domination of certain sections and forces, remoteness of the seat of administration, want of proper transport and communication facilities etc., which requires an opportunity to the people of the concerned area. In the case on hand unfortunately no materials are forthcoming with regard to their grievance of hearing such as difficulties, inconveniences and hardships etc., in the writ petition as in the case of State of Uttar Pradesh, supra. In the circumstances in the absence of any factual foundation in the petition warranting an opportunity we are of the view that the notifications cannot be struck down only on the ground of denial of an opportunity. The Supreme Court has noticed of a post-decision hearing as sufficient compliance of natural justice provided materials are placed in the petition. In the case on hand except a vague allegation in para 13 no factual foundation as such is laid to set aside a notification only on the ground of violation of rules of natural justice. Moreover in the case on

hand elections have already been held and all parties have participated and the results are also announced now. Now at this stage to set aside a notification in the absence of any factual foundation in the petition is not in public interest particularly after election results. Therefore, we reject this contention of the petitioner on the facts of this case.

39. We however direct that in future as and when Government exercises its statutory power and acts in the matter of rotation/delimitation/adjustment of seats, in terms of the rules, affected parties are to be given an opportunity to have their say with regard to their grievances in the said matter. We would further observe that the State Government would be well-advised to amend the rules providing for an opportunity to the affected general public to avoid any criticism on the Government.

40. In the result we reject the contentions raised by the petitioner in this case and uphold the constitutional validity of Act 8 of 2000 and the notification bearing No. RDP 133 ZPS 2000, dated 26-4-2000. We also uphold the impugned notification as being valid in law.

41. We dismiss this writ petition and on the peculiar facts and circumstances of this case we direct parties to bear their respective costs.