

Anil Kumar Vs. State of Kerala

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Court : Kerala

Decided On : Jun-03-2005

Reported in : 2005(3)KLT355

Judge : Thottathil B. Radhakrishnan, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 2, 4, 4(1), 4(2), 5 and 7

Appeal No. : W.P. No. 15280 of 2005

Appellant : Anil Kumar

Respondent : State of Kerala

Advocate for Def. : S. Shanavas Khan, Adv. and; P.V. Lonachan, Sr. Government Pleader

Advocate for Pet/Ap. : Babu S. Nair, Adv.

Disposition : Petition allowed

Judgement :

Thottathil B. Radhakrishnan, J.

1. The first petitioner is an Elected Member of Cheekode Grama Panchayat and the second petitioner is a resident within the limits of the said Panchayat.

2. By Ext.P1 dated 19.1.2005, the Secretary to the Government of Kerala in the Department of Local Administration, addressed the Presidents of different Panchayats, including the Cheekode Grama Panchayat, inter alia, communicating the proposal of the Government to bifurcate the Panchayats, including the Cheekode Grama Panchayat.

3. Ext.P2 notification is issued by publication in the Gazette dated 13.4.2005, whereby diminishing of certain Grama Panchayats, including the Cheekode Grama Panchayat, has been made, in exercise of power under Section 4(2)(b) of the [Kerala Panchayat Raj Act, 1994](#) (hereinafter referred to as 'the Act') for constituting certain village Panchayats, in exercise of power under Section 4(1)(a) of the Act. By the said notification, the area of the Cheekode Grama Panchayat has been diminished by excluding certain areas from the said Grama Panchayat.

4. Though the petitioners had raised a ground that the bifurcation has been done in an unscientific manner and contrary to the provisions of Section 4 of the Act, the relief sought for by them is for a direction that the bifurcation of Cheekode Grama Panchayat shall not be made without considering Ext.P5 objections made by the second petitioner. It is contended that various persons had filed objections to Ext.P2 which are stated to have reached the Office of the Secretary of the Grama Panchayat only after the due date for filing objections, as is evidenced by Ext.P3.

5. The Secretary of the Panchayat has placed a counter-affidavit stating that Ext.P2 communication was addressed to the President of the Panchayat and Ext.R4(a) proposal was prepared by the President of the Panchayat. It is submitted that the said proposal was not placed or approved by the Panchayat.

6. Section 4(2)(b) of the Act provides, inter alia, that the Government may, after consultation with the Panchayat and after previous publication of the proposal by notification, diminish the area of any Village Panchayat by excluding from such Panchayat area, village or group of villages. This means that the Panchayat has to be consulted before the area of the Village Panchayat is diminished. Panchayat, in so far as it is relevant in this case, means a Village Panchayat as defined in Section 2(xxv) of the Act and it is a body corporate specified by the name in the notification issued under Section 4 and it shall have perpetual succession and a

common seal and has the other necessary incidents. This is the effect of Section 5 of the Act. Section 7 provides for composition of a Village Panchayat. Having regard to the concept of 'Panchayat' and the nature of its composition, the consultation that is required under Section 4 of the Act is a consultation with the Panchayat, thereby meaning that any proposal in the form of Ext.P1 ought to have been placed before the Panchayat, in its Committee, for consideration.

7. In such circumstances, it cannot be taken that Ext.R4(a) was issued by the President of the Panchayat on the basis and result of a consultation as contemplated by Section 4 of the Act. Hence, it can be seen that the Panchayat was apparently not consulted before Ext.P2 was issued, as regards Cheekkode Grama Panchayat. The use of the conjunction 'and' in Section 4(2) of the Act, makes it abundantly clear that consultation with the Panchayat and previous publication of the proposal are necessary before a decision to diminish the area of a Panchayat is taken by the Government, on its proposal.

In the result, this Writ Petition is allowed granting relief No. 1 as prayed for and it is directed that the petitioners shall be heard in relation to Ext.P5 and similar objections before a final decision as to bifurcation of Cheekkode Grama Panchayat, is taken.

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