him other than the penalty which is prescribed by the Indian Penal Code for offences under s. 366. In our view, the offence not having been committed at a place specified in the first part of s. 46, and the offence not falling expressly within the terms of ss. 2 to 42 of the Act, the ordinary Criminal Tribunals have jurisdiction without reference to the competent naval authorities to try the accused for the offence alleged to have been committed by him. The committing Magistrate, in our judgment, did not err in failing to give intimation of the proceedings before him to the Commanding Officer of the accused. We are, therefore, unable to accept the reference made by the learned Sessions Judge and make no order on the reference.

Reference rejected.

K. B. S.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

SHANKARAPPA RAMAPPA SIDALATE AND OTHERS, PETITIONERS *v.* THE STATE OF BOMBAY AND OTHERS, OPPONENTS.*

1955 *Nov.* 2

Bombay Village Panchayats Act (Bom. VI of 1933), ss. 102, 99 (1), 11, 107 (2)—Government superseding Village Panchayat—Whether order of supersession can operate beyond the lifetime of the Panchayat—Collector suspending execution of Village Panchayat's resolution being of opinion that it was likely to lead to breach of peace—Whether Collector's opinion can be examined by Court—Government revising order of Director of Local Authorities under s. 107 (2)—Whether Court can go into merits of Government's order.

The power of supersession which Government possesses under s. 102 of the Bombay Village Panchayats Act, 1933, is confined to superseding a Village Panchayat for the period of its normal existence as provided in s. 11 of the Act.

Where the Collector, acting under s. 99 (*1*) of the Bombay Village Panchayats Act, 1933, suspends the execution of a resolution of Village Panchayat on the ground that he was of the opinion that the execution of the resolution was likely to lead to breach of peace, the Court cannot examine and scrutinize the opinion.

When the Government, acting under s. 107 (*2*) of the Bombay Village Panchayts Act, 1933, revises, annuls or modifies any order made by the Director of Local Authorities, it is exercising its power of supervision and control over its subordinate officers. Where the order of the Government is passed with jurisdiction and within the ambit of that section the Court cannot call upon the Government to justify its order on merits.

*Special Civil Application No. 1743 of 1955.

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Special Civil Application under arts. 226 and 227 of the Constitution of India.

The facts are sufficiently set out in the judgment.

R. A. Jahagirdar with *B. M. Kalgate*, for the Petitioners.

V. S. Desai, for the Government Pleader, for Opponent No. 1.

K. S. Daundkar and *H. D. Gole*, for Opponent No. 2.

M. A. Rane, for Opponent No. 3.

K. S. Daundkar, for Opponent No. 4.

S. B. Bhasme, for Opponent No. 5.

Chagla C. J.—This petition is the result of an extremely unfortunate controversy between Kannad speaking and Marathi speaking members of the Village Panchayat of Sankeshwar which is situated in Hukeri Taluka in the Belgaum District. It appears that the record of this Panchayat used to be kept in Marathi language. On May 15, 1954, the Panchayat passed a resolution that the record should be kept in Kannad language. The Panchayat consists of 15 members, 11 of whom are Kannad speaking members and 4 are Marathi speaking members and the Sarpanch also happens to be a Marathi speaking member. On June 24, 1954, the Collector suspended the execution of this resolution, acting under s. 99 (*1*) of the Bombay Village Panchayats Act. An appeal was preferred to the Director of Local Authorities and he set aside the order of the Collector on July 15, 1954, and directed that the resolution passed by the Panchyat should remain effective with the modification that bills and notices issued to members of the public should be in both the languages, Marathi and Kannad. On August 7, 1954, the Government acting under s. 107 (*2*) rescinded the order of the Director of Local Authorities and restored the order of the Collector. A show cause notice was issued against the Panchayat on April 22, 1955, to show cause why it should not be superseded because it had disobeyed the order passed by the Collector which was confirmed by Government and ultimately the Government on July 8, 1955, passed a resolution superseding the Panchayat for a period of two years with effect from July 15, 1955. It is this resolution that is being challenged by the petitioners who are the eleven Kannad speaking members of the Panchayat.

Now, the first ground on which the challenge is made is that the order passed by Government is beyond its competence inasmuch as it supersedes the Panchayat beyond its lifetime. The first meeting of this Panchayat was held on October 3, 1952, and under s. 11 the term of office of the members is four years. Therefore, the natural life of the Panchayat would come to an end on October 3, 1956. The result of the Government's resolution is that the Panchayat continued to be superseded from July 15, 1955 to July 15, 1957, which is beyond October 3, 1956, and Mr. Jahagirdar's contention is that it is not competent to

the Government to supersede a body beyond its natural existence. Now, in order to appreciate this contention, we must look at the language of the section which confers the power upon Government to supersede a Panchayat viz., s. 102. The first part of the section deals with the conduct of a Panchayat which entitled the Government either to dissolve such Panchayat or supersede such Panchayat for the period specified in the order and the consequences of dissolution and supersession are set out in the section. When a Panchayat is dissolved or superseded, all members of the Panchayat shall, from the date specified in the order, vacate their offices as such members and sub-s. (3) of s. 102 provides that when a Panchayat is dissolved, it shall be reconstituted in the manner provided in the Act. In the case of supersession there is a further consequence and that is that all the powers and duties of the Panchayat shall, during the period of supersession, be exercised and performed by such person or persons as the State Government, may, from time to time, appoint in that behalf and all property vested in the Panchayat shall, during the period of supersession, vest in the State Government and s. 102 (4) (c) provides that on the expiry of the period of supersession, the Panchayat shall be reconstituted in the manner provided in the Act, and the persons vacating office shall be eligible for re-election or re-nomination. Now, it is obvious that supersession is a much more severe penalty to be imposed upon a Panchayat than a dissolution because on dissolution the Panchayat can be reconstituted which means that a fresh election can be held and a new Panchayat can come into existence and carry on its work. But in the case of supersession during the period of supersession the powers of the Panchayat are exercised by Government and its property vests in Government and no Panchayat functions during that period. Now, the question is what is the power of Government with regard to supersession? Is the power limited to superseding a Panchayat during its normal life or, as Mr. Desai for the State argues does the power extend to superseding a Panchayat for any length of time as the Government may think proper? Mr. Desai draws attention to the fact that a Panchayat is a body corporate and it has been so made under s. 29 of the Act and it is argued that what is superseded is the body consisting of elected or nominated members of the Panchyat and, therefore, the supersession may continue beyond the life of the elected and nominated body because the permanent Panchayat which is constituted a corporation continues and the Legislature has conferred upon the Government the power to decide that in the case of a particular village there shall be no elected Panchayat for a particular length of time. In other words, according to Mr. Desai, on a proper construction of s. 102

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power is conferred upon Government in effect to disfranchise the voters of a Village Panchayat for any length of time. Mr. Desai says that in the case of a dissolution a new body is elected immediately, but if Government for any reason thinks that an election should not take place and that there should be no elected Panchayat, then by superseding the Panchayat for a particular length of time it can bring about a situation whereby the village must go without an elected Panchayat and the villagers should be deprived of the right of an elected Panchayat. Now, there are two clear objections in accepting this argument. In the first place, what is superseded under s. 102 is 'such Panchayat' which means the Panchayat which is the offending Panchayat as provided under s. 102 (*1*). Therefore, the Panchayat which is superseded is the Panchayat consisting of elected and nominated members. If the Government has been given the power to supersede that particular body, it is difficult to understand how the supersession can go beyond the life of that body. If that body ceases to exist under the provisions of the Act, the supersession cannot affect that body because that body does not exist. The second objection to the contention put forward by Mr. Desai is that the power which he suggests the Government possesses under s. 102 is an extremely wide power and unless the Legislature has conferred that power upon Government in the clearest language we would be extremely loath to come to the conclusion that the Legislature intended Government to disfranchise a village and to allow it to make it possible for a village to go on without a Village Panchayat for any length of time which the Government thinks proper. We can quite understand that under certain circumstances the Legislature may confer such a power upon the Executive, but we would require much clearer language than is to be found in s. 102 to come to the conclusion that in such a case the Legislature has conferred such a power upon the Government. Therefore, in our opinion, on the true construction of s. 102 the power of supersession which Government possesses must be confined to superseding a Village Panchayat for the period of its normal existence as provided in s. 11 of the Act.

Now, if that be the correct view of s. 102, what is the consequence? Does the order made by the Government become bad and are the petitioners entitled to succeed? It is clear that the order of supersesssion would be a valid order until October 3, 1956. The order of the Government goes beyond October 3, 1956. To that extent it may be bad and unenforceable. But we are concerned with the position today as to whether the petitioners are entitled to say quash this order and hold that the supersession by Government of the Panchayat is not justified in law. In our opinion, the order

is clearly severable and it is always the duty of the Court to lean in favour of the validity of an order rather than against it and if the Court can legitimately uphold the order, it should do so. In our opinion, we find no difficulty in coming to the conclusion that this order is a valid order in so far as it supersedes the Panchayat up to October 3, 1956. If the order purports to supersede it beyond October 3, 1956, then it is an invalid order. But as October 3, 1956, has not yet been reached, no question arises today of quashing that order. If Government insists upon giving effect to this order after October 3, 1956, then the order can be challenged by any party interested in having this order set aside.

The second ground on which the order is challenged is that the Collector, in the first instance, passed an order which was invalid and not within the ambit of s. 99 which enables him to pass that order. Turning to the order of the Collector, the order says that by-law 41 of the by-laws framed by the District Local Board, Belgaum, under s. 109 of the Bombay Village Panchayats Act, 1933, provides that the proceedings of the meeting of the Panchayat shall be recorded in vernacular or in any language approved by the Collector and Collector expresses the opinion that as the Village Panchayat changed its language from Marathi to Kannad without taking the permission of the Collector, its resolution was unlawful. Mr. Jahagirdar draws our attention to the fact that Government itself by its resolution, dated May 17, 1950, has announced its decision that in the District of Belgaum the regional language should be Kannad except in the taluka of Shahapur where it should be both Kannad and Marathi and Mr. Jahagirdar points out that the Collector was clearly wrong when he took the view that his consent was necessary before the Village Panchayat could adopt Kannad as the official language of the body. Mr. Jahagirdar says that Kannad is the regional language of this village and that under by-law 41 that language could be accepted as the official language and no consent of the Collector was necessary. It is only when a language other than the regional language is to be adopted by the Village Panchayat that the consent of the Collector is necessary. Now, it may be that there is force in what Mr. Jahagirdar contends, although unfortunately there is a bitter controversy which is apparent from the record before us as to whether the language of the majority in this village is Marathi or Kannad. We need not go into this question and further aggravate the feelings of the people living in the village. But the Collector has not passed this order on the ground that the decision of the Village Panchayat was not justified under by-law 41. In the last para. of his order he points out that "from the application of the residents of Sankeshwar it appears that the execution

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of the aforesaid resolution is likely to annoy the public and might lead to a breach of peace and in the interest of public peace it is essential that *status quo* should be maintained for the time being". It is because of this that he acted under s. 99(*1*) and suspended the execution of the resolution passed by the Village Panchayat. Turning to s. 90 (*1*) what is material is the opinion of the Collector and if the Collector honestly forms the opinion that any order or resolution of a Panchayat, or the doing of anything which is about to be done or is being done by or on behalf of a Panchayat, is causing or is likely to cause injury or annoyance to the public, or to lead to a breach of the peace, or is unlawful, he may, by order in writing, suspend the execution or prohibit the doing thereof. If the opinion, as I just said, is honestly formed, it is not for this Court to consider the validity of that opinion. Therefore, when the Collector says that he had formed the opinion that there was a likelihood of the breach of the peace, he was entitled to pass the order. Even assuming that the Panchayat was within its powers in passing the resolution about the Kannad language, even assuming that the Collector's view about by-law 41 is erroneous, what matters and what is material for the purpose of s. 99 is whether the Collector formed the opinion about the likelihood of the breach of the peace. If the Collector formed that opinion, there is an end of the matter. We cannot examine and scrutinise that opinion and form our own opinion on the materials which Mr. Jahagirdar has attempted to place before us. Mr. Jahagirdar has tried to satisfy us that there was no possibility of the breach of the peace and that was the Collector's mere imagination. But as we just said, we are not sitting in appeal over the opinion formed by the Collector and, therefore, the order made by the Collector cannot be challenged.

Then this order was reversed by the Director of Local Authorities and according to Mr. Jahagirdar, he is the only person in all this long controversy who had the understanding and the sympathy for the cause of the Kannad speaking people and who did justice to them. The Director points out that the Kannad speaking people form the largest single linguistic group of this village and, therefore, he does not accept the decision of the Collector and reverses the order. Then we come to the final order of the Government and that order is challenged by Mr. Jahagirdar on the ground that it is based upon a patently erroneous fact, and that is, the Marathi population is overwhelmingly greater than the Kannad and the language of the majority of the villagers is Marathi. When we look at this order, there are three recitals. The first sets out the order of the Collector, the second the order of the Director of Local Authorities and the third is the representation made

by the Sarpanch about the Marathi population being a large majority and finally, in the operative part of the order the Government says that "after carefully considering the case, it is pleased to rescind the order of the Director of Local Authorities and to restore the order of the Collector". Mr. Jahagirdar says that whatever the Sarpanch might say, in view of the Government's own notification and in view of the attitude taken up by them in their affidavit filed in this petition, it is impossible for the Government to have taken the view that the Marathi speaking people were in majority. Again, we are not concerned with the controversy about the relative strength of the Kannad and the Marathi sections of the population of the village. The Government have acted under s. 107 (2) and that sub-section gives them the power to exercise the same authority and control over the Commissioner in this case as they have and exercise over him in the general and revenue administration. Therefore, the Government has the power under this sub-section to revise, annul or modify any order made by the Director of Local Authorities who is an officer subordinate to Government and Government makes it clear that it has come to this decision after considering all the materials before it. What actually ultimately influenced Government in coming to this decision we are not told; nor is there any obligation upon Government to give reasons for reversing the order of the Director of Local Authorities. Mr. Jahagirdar's attempt has been to satisfy us that on merits the order of the Director is correct and the order of Government is erroneous. Again, we are not sitting in appeal over the order of the Government passed on August 7, 1954. However, erroneous that order may be, if that order is passed with jurisdiction and within the ambit of s. 107 (2), then we cannot call upon Government to justify that order on merits. The order is passed by Government exercising its power of supervision and control over its subordinate officers. If that power is validly exercised, then we have no authority to question Government why and wherefor that order came to be passed.

The third contention raised by Mr. Jahagirdar is that the ground given by Government in their order of July 8, 1955, superseding the Panchayat that the Panchayat persisted in disobeying the orders of the Collector is a ground which cannot be justified on the record of this case. Now, in the first place, under s. 102 it is for Government to form the opinion that a Panchayat has persistently disobeyed any of the orders of the Collector or Commissioner under s. 99 and if Government has formed that opinion, that opinion is binding upon this Court. But we are of the opinion that even on merits it is difficult for Mr. Jahagirdar to satisfy us that there was not a persistent disobedience of the order of the Collector. Dates themselves

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are very eloquent. The Collector made the order on June 24, 1954, and the Government confirmed the order of the Collector on August 7, 1954. The notice to show cause was not issued until April 22, 1955, long after the date when the Panchayat passed the resolution to keep the record in Kannad on May 15, 1954. The records have been kept in Kannad and at no time has any attempt been made to conform to the order passed by the Collector. Mr. Jahagirdar says that the final order of Government was not placed before the Village Panchayat. It is not suggested and cannot be suggested that the members of the Panchayat had no knowledge of the order passed by Government on August 7, 1954. What is rather significant is that even when the show cause notice was being discussed by the Panchayat on May 7, 1955, one Mr. Nalavade proposed that the Daftar of the Panchayat should be maintained in Marathi script. An amendment was moved to this resolution and the proposal of Mr. Nalavade was rejected. Members pointed out that certain representations had been made to the Chief Minister and the Minister for Local Self-Government against the order passed by Government on August 7, 1954, and till these representations were answered, they could not show cause in respect of the notice issued on April 22, 1955. Whatever that may be, the fact remains that even when Government issued a notice against the Panchayat to show cause why it should not be superseded for not obeying the order of the Collector, even at that stage the Panchayat made no effort to maintain the record in Marathi in accordance with the order passed by the Collector which was upheld by Government, but they persisted in continuing to maintain the record in Kannad. The mere fact that the order of the Government was not formally brought before the Village Panchayat cannot justify its attitude in continuing to maintain the record in Kannad.

The result, therefore, is that the petition must fail and is dismissed. No order as to costs.

Application dismissed.

K. B. S.